

EXHIBIT 2
WARNDERS
TRANSCRIPT

[Page 1]
February 8, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

KEVIN CAMPBELL,

Plaintiff,

-against- Case No. 1:22-CV-7662 DLI-MMH

FEDERAL EXPRESS CORPORATION A/K/A FEDEX

EXPRESS, AND ERIC WANDER, INDIVIDUALLY

Defendants.

-----X

February 8, 2024

10:30 a.m.

LEXITAS LEGAL VIEW

EXAMINATION BEFORE TRIAL of ERIC
WARNDERS, a Defendant in the above-entitled
action, held at the above time and place,
pursuant to Notice, taken before Peter Toth, a
reporter and Notary Public within and for the
State of New York.

[Page 2]
February 8, 2024

(2) A P P E A R A N C E S

(3) JESSICA MASSIMI, ESQ.

Attorneys for Plaintiff
(4) 99 Wall Street, Suite 1264
New York, New York 10005

(5) BY: JESSICA MASSIMI, ESQ.

(6) GABRIEL P. MCGAHA, ESQ.

Attorneys for Defendants
(7) FEDERAL EXPRESS CORPORATION a/k/a
FEDEX EXPRESS, and ERIC WANDER
(8) 3620 Hacks Cross Road, Building B,
3rd floor

(9) Memphis, Tennessee 38125

BY: GABRIEL P. MCGAHA, ESQ.

(10)

(11)

(12) ALSO PRESENT: Sharon Daniel from FedEx

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(23)

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(2) F E D E R A L S T I P U L A T I O N S

(3) IT IS HEREBY STIPULATED AND AGREED

(4) by and between the attorneys for the

(5) respective parties herein, that the

(6) sealing, filing and certification of the

(7) within deposition be waived; that such

(8) deposition may be signed and sworn to

(9) before any officer authorized to administer

(10) and oath, with the same force and effect as

(11) if signed and sworn to before the officer

(12) before whom said deposition is taken.

(13) IT IS FURTHER STIPULATED AND AGREED

(14) that all objections, except as to form, are

(15) reserved to the time of trial.

(16)

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(21)

(22)

(23)

(24)

(25)

(1) E. WARNDERS 4

(2) E R I C W A R N D E R S, the witness herein,
(3) having been duly sworn by a Notary
(4) Public of the State of New York, was
(5) examined and testified as follows:

(6) EXAMINATION BY

(7) **MS. MASSIMI:**

(8) Q State your name for the record,
(9) please.

(10) A Eric Warnders.

(11) Q State your address for the record,
(12) please.

(13) A 58-95 Maurice Avenue, Maspeth, New
(14) York 11378.

(15) COURT REPORTER:

(16) It is hereby stipulated and agreed
(17) by and between counsel for all parties
(18) present that this deposition is to be
(19) conducted by video conference, that the
(20) court reporter, all counsel, and the
(21) witness are all in separate remote
(22) locations and participating via
(23) Videoconference (LegalView/Zoom) meeting
(24) under the control of Lexitas LEGAL VIEW
(25) Court Reporting Service, that the officer

(1) E. WARNDERS 5

(2) administering the oath to the witness
(3) need not be in the place of the
(4) deposition and the witness shall be sworn
(5) in remotely by the court reporter after
(6) confirming the witnesses identity. It is
(7) further stipulated that exhibits may be
(8) marked by the attorney presenting the
(9) exhibit to the witness, and that a copy
(10) of any exhibit presented to a witness
(11) shall be emailed to or otherwise in
(12) possession of all counsel prior to any
(13) questioning of a witness regarding the
(14) exhibit in question. All parties shall
(15) bear their own costs the conduct of this
(16) deposition by video conference. Everyone
(17) agree or so stipulate?

(18) MS. MASSIMI: Stipulated.

(19) MR. MCGAHA: Stipulated.

(20) MS. MASSIMI: Mr. McGaha, you agree
(21) to the federal stips?

(22) MR. MCGAHA: Yes.

(23) BY MS. MASSIMI: Okay.

(24) Good morning, Mr. Warnders, my name
(25) is Jessica Massimi. I'm an attorney. I

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represent the plaintiff Kevin Campbell in the case that we are here to discuss today.

The purpose of this deposition is for me to ask you questions about the incidents giving rise to this lawsuit. I will ask a series of questions and the court reporter will take down my questions, your answers, and anything else that gets said.

Because the court reporter has to take down everything that gets said, this is not like a normal conversation where there would be cross talk. Because the court reporter has to take down everything that is being said you have to let me finish my complete question even if you can anticipate what I am going to ask. For that same reason I will let you finish your complete answer before I ask my next question so that the court reporter can take down my complete question and your complete answer.

Does that makes sense?

(1) E. WARNDERS 7

(2) THE WITNESS: Yes, it does.

(3) MS. MASSIMI: Because the court
(4) reporter is taking down everything that
(5) gets said here today all of your answers
(6) must be verbal. You cannot answer
(7) questions by saying uh-uh or uh-huh or by
(8) making gestures or with nods or shakes of
(9) the head because the court reporter
(10) cannot interpret that for the record.

(11) Do you understand?

(12) THE WITNESS: Yes, I do.

(13) MS. MASSIMI: If you don't
(14) understand a question that I ask, let me
(15) know, I will attempt to rephrase the
(16) question.

(17) If you do not hear part of a
(18) question, let me know and I will restate
(19) the question or I will have it read back.

(20) If you realize during the
(21) deposition that an earlier answer was
(22) inaccurate or incomplete, just let me
(23) know and we can go on the record to
(24) correct it. If you feel like you need a
(25) break at any point, you can take a break,

(1) E. WARNDERS 8

(2) I just ask that you answer any pending
(3) question before you step out, meaning if
(4) I've asked a question I ask that you
(5) answer it before you take a break.

(6) Do you understand?

(7) THE WITNESS: Yes, I do.

(8) MS. MASSIMI: Do you understand all
(9) of the instructions that I provided here
(10) today?

(11) THE WITNESS: Yes, I do.

(12) MS. MASSIMI: If you need to
(13) revisit any question or answer at any
(14) point in the deposition, let me know we
(15) can go on the record and revisit it.
(16) Does that make sense?

(17) THE WITNESS: Yes.

(18) MS. MASSIMI: Do you understand
(19) that you've taken an oath to tell the
(20) truth here today?

(21) THE WITNESS: Yes, I do.

(22) MS. MASSIMI: Do you understand
(23) that even though we are here over Zoom
(24) and you are in a conference room the oath
(25) that you've taken to tell the truth here

(1) **E. WARNDERS** 9

(2) today is the same oath you would take as
(3) if you were in a courtroom in front of a
(4) judge?

(5) **THE WITNESS:** Yes, I do.

(6) **MS. MASSIMI:** Do you have any
(7) physical or mental condition that might
(8) keep you from testifying truthfully,
(9) fully, and accurately here today?

(10) **THE WITNESS:** No, I do not.

(11) **MS. MASSIMI:** Have you taken any
(12) medication that could impact your ability
(13) to testify?

(14) **THE WITNESS:** No, I have not.

(15) **MS. MASSIMI:** Have you failed to
(16) take any medication that you normally
(17) take?

(18) **THE WITNESS:** No, I have not.

(19) **MS. MASSIMI:** Have you consumed any
(20) alcohol, drugs, or marijuana in the last
(21) 24 hours?

(22) **THE WITNESS:** No, I have not.

(23) Q Are you represented by an attorney
(24) today?

(25) A Yes, I am.

(1) **E. WARNDERS** 10

(2) Q What's your attorney's name?

(3) A **Gabriel.**

(4) Q Have you ever been deposed before?

(5) A **Yes, I have.**

(6) Q How many times?

(7) A **Three.**

(8) Q Including this time or three times
(9) in addition to this time?

(10) A **Three times in addition to this**
(11) **time.**

(12) Q Were you a party in any of the
(13) lawsuits related to those three other
(14) depositions?

(15) **THE WITNESS: Meaning?**

(16) Q In any of the lawsuits related to
(17) those three other depositions where you
(18) testified were you a plaintiff, a defendant,
(19) or a nonparty?

(20) A **I was a plaintiff twice and a**
(21) **defendant once.**

(22) Q In each of the lawsuits where you
(23) were a plaintiff what were those lawsuits
(24) about?

(25) A **It was so long ago. One was about**

(1) **E. WARNDERS** 11

(2) **something in regards to homophobic in the**
(3) **workplace, and then the other one I don't**
(4) **recall.**

(5) Q The one regarding homophobia you
(6) were a plaintiff in that lawsuit?

(7) A Yes.

(8) Q What were you alleging?

(9) A I'm sorry, I said I was a
(10) defendant, I apologize, a defendant in the
(11) lawsuit.

(12) MS. MASSIMI: No, that's okay. So
(13) let me just backtrack a little bit.

(14) Q There were three other lawsuits
(15) where you were a party, correct?

(16) A Correct.

(17) Q In those three lawsuits were you a
(18) plaintiff or a defendant?

(19) THE WITNESS: Define plaintiff for
(20) me.

(21) MS. MASSIMI: The plaintiff, for
(22) example, Mr. Campbell is the plaintiff in
(23) this case he's the one that's suing.

(24) Q So in any of the three prior
(25) lawsuits were you suing someone, or were you a

(1) E. WARNDERS 12

(2) defendant like you are here today, or were you
(3) something else?

(4) THE WITNESS: Okay, so I got that
(5) mixed up.

(6) MS. MASSIMI: Okay.

(7) A So a defendant twice and a
(8) plaintiff once.

(9) Q Okay.

(10) MR. MCGAHA: And just to clarify
(11) just so to make sure he is not
(12) misunderstanding your question, there's a
(13) difference from being deposed and being a
(14) defendant a named party in a lawsuit.

(15) So she's asking were you a party
(16) meaning were you named a named party as
(17) opposed to being deposed; does that make
(18) sense.

(19) THE WITNESS: So let me just make
(20) sure I am understanding this. So you
(21) mean I had to give testimony that doesn't
(22) make --

(23) MR. MCGAHA: Right, that does not
(24) make you a defendant.

(25) A Okay, so no, I stand corrected then

(1) **E. WARNDERS** 13

(2) **I've only had one where I am the plaintiff.**

(3) **MR. MCGAHA: For a named party?**

(4) **THE WITNESS: Correct.**

(5) Q Have you ever been a defendant in a
(6) lawsuit other than this lawsuit?

(7) **A No.**

(8) Q But you have been deposed three
(9) times other than today, correct?

(10) **A That's correct.**

(11) Q Those three depositions were
(12) related to three separate lawsuits, correct?

(13) **A Correct.**

(14) Q In one of those lawsuits you were a
(15) plaintiff, correct?

(16) **A That's correct.**

(17) Q In two of those lawsuits you were a
(18) nonparty, correct?

(19) **MR. MCGAHA: I can't answer the**
(20) **question, but she's asking you --**

(21) **THE WITNESS: Well, I need**
(22) **clarification because I got the other**
(23) **part wrong, so I am looking for some**
(24) **clarification.**

(25) **MR. MCGAHA: Okay. What she's**

(1) **E. WARNDERS** 14

(2) asking you --

(3) **MS. MASSIMI:** Yeah, that's okay.

(4) Your attorney is correct he can't really
(5) help you answer the questions, so and I'm
(6) not trying to trick you these are just
(7) standard questions.

(8) Q So there are three other lawsuits
(9) where you have provided deposition testimony,
(10) correct?

(11) **A That's correct.**

(12) Q In one of those lawsuits you were a
(13) plaintiff and you provided deposition
(14) testimony, correct?

(15) **A That's correct.**

(16) Q In two of those lawsuits you were
(17) not a plaintiff, correct?

(18) **A Correct.**

(19) Q And you were also not being sued
(20) personally, correct?

(21) **A Correct.**

(22) Q But you provided deposition
(23) testimony, correct?

(24) **A Correct.**

(25) Q In the case where you were a

(1) E. WARNDERS 15

(2) plaintiff in what year did you provide
(3) deposition testimony?

(4) THE WITNESS: That was personal, so
(5) does this have any relevance?

(6) MS. MASSIMI: I mean, I can explain
(7) to you the standard for discovery, it is
(8) a proper question, and it's public
(9) record. So, yes, you do have to answer
(10) the question as to what the lawsuit was
(11) about where you were a plaintiff and you
(12) testified at a deposition.

(13) THE WITNESS: So when you say it's
(14) public record so if the case was settled
(15) out of court, is it still public record?

(16) MS. MASSIMI: The existence of the
(17) lawsuit itself is very likely public
(18) record unless for some reason the lawsuit
(19) was sealed.

(20) THE WITNESS: I have no knowledge
(21) about that.

(22) MS. MASSIMI: I mean you would know
(23) if it was sealed, so I am going to go
(24) ahead and assume that it has not been
(25) sealed.

(1) **E. WARNDERS** 16

(2) Q The lawsuit that you were a
(3) plaintiff what was that lawsuit about; what
(4) were you alleging?

(5) **THE WITNESS:** Well, first of all, I
(6) don't know if that was sealed. You're
(7) assuming it was sealed, but I don't know
(8) if that was sealed.

(9) **MS. MASSIMI:** Sir, can you please
(10) answer the question?

(11) A I can't answer that because I don't
(12) know if the record was sealed.

(13) Q It would be your burden to prove
(14) that, so you don't even know if it was?

(15) A I've never been asked that
(16) question.

(17) **MS. MASSIMI:** Well, you're a
(18) defendant in this lawsuit and you're
(19) being asked today and it's a proper
(20) question.

(21) **THE WITNESS:** I completely
(22) understand what you are trying to ask me,
(23) but I don't know if it was sealed so how
(24) can I answer the question if I don't know
(25) if it was sealed.

(1) **E. WARNDERS** 17

(2) **MS. MASSIMI:** That's your
(3) responsibility and that's something you
(4) should have discussed with your attorney
(5) prior to today. So please answer the
(6) question. Your attorney is not
(7) instructing you not to answer, you have
(8) to answer the question.

(9) **MR. MCGAHA:** Just to repeat the
(10) question, are you asking him -- what
(11) exactly are you asking him?

(12) Q In the lawsuit where you were a
(13) plaintiff what was the lawsuit about?

(14) A It was medical negligence.

(15) Q Okay. Where was that lawsuit
(16) filed?

(17) A Probably in Nassau County.

(18) Q Was it filed in state court or
(19) federal court?

(20) A I don't know the answer to that.

(21) Q What was the name of your attorney
(22) in that lawsuit?

(23) A Ben Rubinowitz.

(24) Q Is that lawsuit still going on, or
(25) is it resolved?

(1) E. WARNDERS 18

(2) **A It is resolved.**

(3) Q What was the name of the law firm
(4) that Mr. Rubinowitz was working for?

(5) **A Gair, Gair, Conason.**

(6) Q Gair, Gair, Conason, Rubinowitz,
(7) Bloom, Hershenhorn, Steigman & Mackauf; is
(8) that correct, sir?

(9) **A Sounds about right.**

(10) Q And in that firm Ben Rubinowitz was
(11) your attorney?

(12) **A That's correct.**

(13) Q Did Mr. Rubinowitz try the case, or
(14) did it settle?

(15) **A It settled.**

(16) Q For how much?

(17) **A Somewhere around --**

(18) **MR. MCGAHA: I'm going to instruct**
(19) **the witness not to answer that question,**
(20) **that's probably -- that is probably -- I**
(21) **haven't seen the settlement agreement,**
(22) **but more than likely that is**
(23) **confidential.**

(24) **MS. MASSIMI: Well, we can seal or**
(25) **we can mark this part of the deposition**

(1) **E. WARNDERS** 19

(2) **confidential.**

(3) **MR. MCGAHA:** No, I think part of
(4) **the settlement agreement probably says**
(5) **that he is not allowed to discuss the**
(6) **settlement amount with anybody.**

(7) **MS. MASSIMI:** I wouldn't be so sure
(8) **about that.**

(9) **MR. MCGAHA:** Well, I am going to
(10) **instruct him not to answer that question.**

(11) Q What's the index number of that
(12) lawsuit?

(13) **MR. MCGAHA:** I don't know, we can
(14) **try to find it and give it to you.**

(15) **MS. MASSIMI:** I'm asking the
(16) **witness.**

(17) **A** I don't know.

(18) Q When did you file that lawsuit?

(19) **A** I think 2008.

(20) Q Was it filed under your name with
(21) the correct spelling?

(22) **A** That's correct.

(23) Q Are you married?

(24) **A** Yes, I am.

(25) Q What is your wife's name?

(1) E. WARNDERS 20

(2) **A Jennifer.**

(3) Q Is it your testimony here today
(4) that you've been a plaintiff in only one other
(5) lawsuit?

(6) **A Yeah, I believe so.**

(7) Q Have you ever sued anyone at Small
(8) Claims Court?

(9) **A To the best of my knowledge, no, I**
(10) **don't recall.**

(11) Q You don't recall if you have ever
(12) sued anyone in Small Claims Court with your
(13) wife Jennifer?

(14) **A I don't recall.**

(15) Q Is there anything you can refer to
(16) that would refresh your recollection as to
(17) whether you have ever sued anyone in Small
(18) Claims Court with your wife Jennifer?

(19) **A I guess I could go online like you**
(20) **are.**

(21) Q Would that refresh your
(22) recollection?

(23) **A Maybe.**

(24) Q That might refresh your
(25) recollection as to whether you sued anyone in

(1) E. WARNDERS 21

(2) Small Claims Court before?

(3) **A Well, obviously, you know something**
(4) **that you are asking me, so I don't recall is**
(5) **my answer.**

(6) Q And my question was, is there
(7) anything you can refer to that would refresh
(8) your recollection as to whether you've ever
(9) sued anyone in Small Claims Court?

(10) **A My answer would be no.**

(11) Q Do you know what a scar petition
(12) is?

(13) **A You're asking me, I said no.**

(14) **THE WITNESS: Can I ask the**
(15) **relevance of this?**

(16) **MR. MCGAHA: No. Don't.**

(17) Q In the case where you were
(18) represented by Ben Rubinowitz when did that
(19) case settle?

(20) **A Approximately, 2015.**

(21) Q Do you know whether the settlement
(22) in that case was confidential?

(23) **A No, I do not.**

(24) Q What were you alleging in that
(25) lawsuit?

(1) E. WARNDERS 22

(2) THE WITNESS: It's irrelevant here.

(3) Q Sir?

(4) A I am not going to answer that
(5) question.

(6) Q You are not going to answer the
(7) question?

(8) A It's irrelevant to what we are
(9) talking about.

(10) Q Your attorney should have explained
(11) to you, you can't refuse to answer questions
(12) here unless instructed to do so by your
(13) attorney on the basis of privilege, are you
(14) aware of that?

(15) THE WITNESS: In regards to the
(16) case?

(17) MS. MASSIMI: Well, what else do
(18) you think I would be referring to?

(19) THE WITNESS: I don't know, you are
(20) digging into my own private stuff.

(21) Q The questions that I'm asking you
(22) are permissible question for a deposition and
(23) --

(24) MR. MCGAHA: These questions have
(25) nothing to do with the case, but you can

(1) **E. WARNDERS** 23

(2) **answer her question. Generally, what did**
(3) **the lawsuit have to do with, what were**
(4) **you alleging generally? You don't have**
(5) **to get into the details.**

(6) **THE WITNESS: Okay, ask your**
(7) **question again, please.**

(8) Q Where were you alleging in the
(9) medical malpractice lawsuit where you were
(10) represented by Ben Rubinowitz?

(11) A **Negligence.**

(12) Q Against whom?

(13) A **Against several people.**

(14) Q Was it related to any medical
(15) malpractice at a municipal hospital or a
(16) private entity?

(17) A **Be more private.**

(18) Q I'm sorry?

(19) A **I would assume private.**

(20) Q Was it related to treatment you
(21) received at a government hospital, a municipal
(22) hospital in Nassau County?

(23) A **No.**

(24) Q I'm sorry?

(25) A **I don't believe so.**

(1) **E. WARNDERS** 24

(2) Q Okay. And am I clear that you are
(3) refusing to answer the question as to how much
(4) that case settled for?

(5) MR. MCGAHA: You are clear that I
(6) instructed him not to answer that
(7) question.

(8) MS. MASSIMI: And what's the basis?

(9) MR. MCGAHA: The basis is that it's
(10) more than likely confidential and before
(11) I have him answer that question I am
(12) going to determine whether or not it's
(13) confidential.

(14) MS. MASSIMI: Okay, so do you want
(15) to revisit that at a later point then
(16) after a break?

(17) MR. MCGAHA: I'm not sure that I
(18) will be able to get that information
(19) today, but we can do our best to try to
(20) do that.

(21) MS. MASSIMI: If you are unable to
(22) do it today, I am going to follow-up in
(23) writing --

(24) MR. MCGAHA: That's fine.

(25) MS. MASSIMI: -- with some further

(1) E. WARNDERS 25

(2) questions or possibly ask to have him
(3) brought back if it can't be resolved in
(4) writing.

(5) MR. MCGAHA: About whether or not
(6) how much money he settled the case for?

(7) MS. MASSIMI: Mr. McGaha, do you
(8) intend to take this case to trial?

(9) MR. MCGAHA: No, I think it's going
(10) be done before we ever get there.

(11) MS. MASSIMI: Well, we will see
(12) about that. Short of that, I am
(13) permitted to explore these areas because
(14) they very well may --

(15) MR. MCGAHA: I don't --

(16) MS. MASSIMI: Mr. McGaha, if you
(17) could just please let me finish.

(18) MR. MCGAHA: Go ahead.

(19) MS. MASSIMI: These areas of
(20) inquiry are permissible, I am allowed to
(21) ask about other lawsuits. If and when
(22) this case goes to trial, and it very well
(23) may, we will have motions in limine. But
(24) these questions are proper, prior
(25) lawsuits, litigiousness. He's a

(1) **E. WARNDERS** 26

(2) **defendant asking about his net worth in**
(3) **and of itself is permissible, so all of**
(4) **these questions are permissible.**
(5) **Plaintiff is seeking punitive damages,**
(6) **this is all permissible area of inquiry.**

(7) **Q** You were deposed in two other
(8) lawsuits where you were not a plaintiff and
(9) where you were not named as a defendant,
(10) correct?

(11) **A** Correct.

(12) **MS. MASSIMI:** Can you please just
(13) **speak up, sir, so that the court reporter**
(14) **can hear you?**

(15) **A** That is correct.

(16) **Q** Okay. When did you provide
(17) deposition testimony in those two lawsuits?

(18) **MR. MCGAHA:** If you can recall.

(19) **A** Maybe, I mean, I can't be exact, I
(20) **can give an approximation. Maybe 2012, 2013,**
(21) **something maybe in there.**

(22) **Q** You believe you provided deposition
(23) testimony related to those two lawsuits where
(24) you were not a party in 2012 and 2013?

(25) **A** Something around there.

(1) **E. WARNDERS** 27

(2) Q What were those lawsuits about?

(3) A I told you, one I don't remember.
(4) The other one was about homophobic behavior in
(5) the workplace.

(6) Q What happened to both of those
(7) lawsuits, were they dismissed, did they
(8) settle, did they go to trial?

(9) A I honestly don't know.

(10) Q The one where it was alleged there
(11) was homophobic behavior in the work place
(12) where was that lawsuit filed?

(13) A Again, I do not know.

(14) Q What were the allegations in that
(15) lawsuit?

(16) A I honestly don't know the
(17) allegations. All I know is what I was just
(18) asked if I heard anything or seen anything,
(19) that's it.

(20) Q And what did you say?

(21) A No.

(22) Q Who was the defendant in that case
(23) regarding the homophobic comments in the
(24) workplace?

(25) MR. MCGAHA: The person or entity.

(1) **E. WARNDERS** 28

(2) **THE WITNESS: I know I am trying to**
(3) **remember.**

(4) **A Something St. Claire.**

(5) Q The other lawsuit where you don't
(6) remember, do you recall which type of lawsuit
(7) that was, was it personal injury, was it
(8) employment discrimination, something else?

(9) **A I don't honestly recall.**

(10) Q Other than today and those three
(11) other incidents where you were deposed, have
(12) you ever been deposed any other time?

(13) **A No.**

(14) Q Can you just speak up a little bit?
(15) What was your answer?

(16) **A No.**

(17) Q Have you ever testified in court?

(18) **A No.**

(19) Q Have you ever testified under oath
(20) other than today and the other three
(21) depositions you mentioned?

(22) **A I don't recall.**

(23) Q Is there anything you can refer to
(24) that would refresh your recollection as to
(25) whether you've ever testified under oath

(1) E. WARNDERS 29

(2) before other than today or the three other

(3) depositions you mentioned?

(4) **A No.**

(5) Q Do you have any nicknames?

(6) **A No, I do not.**

(7) Q Have you ever been known by any

(8) name other than Eric Warnders?

(9) **A No.**

(10) Q Where were you born?

(11) **A Born in California.**

(12) Q Where do you currently live, what

(13) state?

(14) **A I live in New York.**

(15) Q Where in New York?

(16) **A Long Island.**

(17) Q How long have you lived on Long

(18) Island?

(19) **A Since May of 2000.**

(20) Q Prior to May of 2000, where did you

(21) live?

(22) **A I lived in Texas.**

(23) Q How long did you live in Texas?

(24) **A Eighteen years.**

(25) Q How old are you?

(1) E. WARNDERS 30

(2) A I'm 49 years old.

(3) Q Have you ever been divorced?

(4) A No.

(5) Q Do you have any kids?

(6) A Yes.

(7) Q How many?

(8) A Four.

(9) Q What are there ages?

(10) A Twenty-five, 23, 20, and 11.

(11) Q Do you owe child support?

(12) A No.

(13) Q Have you ever been arrested?

(14) A No.

(15) Q So you've never been convicted of a

(16) felony?

(17) A That's correct.

(18) Q What is your race?

(19) A Caucasian.

(20) Q Do you watch the news or listen to

(21) the news or read the news?

(22) A I don't -- I would never read the

(23) news. Do I watch the news, if I'm flipping

(24) through the channels.

(25) Q Where do you watch the news?

(1) E. WARNDERS 31

(2) **THE WITNESS: What do you mean?**

(3) Q Where do you watch news?

(4) **THE WITNESS: Where, as in where**

(5) **the TV --**

(6) Q What channel?

(7) **A Oh, what channel. Okay. There's**

(8) **no specific channel, just flip through**

(9) **channels.**

(10) Q Do you belong to any groups outside

(11) of work?

(12) **A No.**

(13) Q Do you have any social affiliations

(14) with any groups outside of your job?

(15) **A No.**

(16) Q Do you have hobbies outside of your

(17) job?

(18) **A No.**

(19) Q Have you ever attended any

(20) political gatherings or protests or

(21) demonstrations?

(22) **A No.**

(23) Q You said you were born in

(24) California; is that correct?

(25) **A That's correct.**

(1) **E. WARNDERS** 32

(2) Q Where were your parents born?

(3) A My dad was born in Holland and my
(4) mother was born in California.

(5) Q Your dad was born in Holland and
(6) your mom was born in California; is that what
(7) you said?

(8) A Correct.

(9) Q Do you know when your dad came to
(10) this country?

(11) A Maybe when he was probably around
(12) 17, I think -- when he was 17 years old, so
(13) he's 81 years old this June, so. And that's
(14) what I was told.

(15) Q Has Fedex ever made any disability
(16) or religious accommodations for you?

(17) A No.

(18) Q Have you ever requested any
(19) disability or religious accommodations from
(20) Fedex?

(21) A No.

(22) Q Do you observe any religion?

(23) A I'm Catholic.

(24) Q Has Fedex accommodated your
(25) religious observances to the extent necessary?

(1) E. WARNDERS 33

(2) **THE WITNESS: I don't understand**
(3) **the question.**

(4) Q Have you ever been impeded or
(5) prevented from observing any religious
(6) traditions as a result of your job?

(7) **A No.**

(8) Q You said you're married, correct?

(9) **A That's correct.**

(10) Q What race is your wife?

(11) **A Caucasian.**

(12) Q How long have you been married?

(13) **A Twenty-seven years.**

(14) Q Where is your wife from?

(15) **A She's from New York.**

(16) Q Where in New York?

(17) **A I believe Elmont; I know they lived**
(18) **in Elmont.**

(19) Q Okay. Have you ever complained of
(20) any type of discrimination at Fedex?

(21) **A No.**

(22) Q You've never complained of any
(23) discrimination at FedEx?

(24) **THE WITNESS: Me personally?**

(25) **MS. MASSIMI: Yes.**

(1) **E. WARNDERS** **34**

(2) **A No.**

(3) Q How long have you worked at FedEx?

(4) **A Twenty-five years.**

(5) Q Do you own your home?

(6) **A Yes.**

(7) Q Do you own homes other than the

(8) home where you live on Long Island?

(9) **A No.**

(10) Q Do you have any employer other than

(11) FedEx?

(12) **A An employer other than FedEx, no.**

(13) Q Over the last 25 years have you had

(14) an employer other than FedEx?

(15) **A Not that I recall, no.**

(16) Q Have you ever attended any anger

(17) management counseling?

(18) **A No.**

(19) Q Have you ever been court ordered to

(20) attend any anger management or counseling?

(21) **A No.**

(22) Q Have you ever been on probation or

(23) parole?

(24) **A No.**

(25) Q Have you ever attended a drug

(1) E. WARNDERS 35

(2) treatment or counseling program either

(3) inpatient or outpatient?

(4) **A No.**

(5) Q Have you ever sued anyone?

(6) **A Yes.**

(7) Q You're referring to the med mal

(8) lawsuit we mentioned earlier?

(9) **A That's correct.**

(10) Q Other than that, have you ever sued

(11) any person or entity?

(12) **A Not that I believe so.**

(13) Q What is your highest level of

(14) education?

(15) **A Got my BA from Dowling.**

(16) Q Can you spell that?

(17) **A D-O-W-L-I-N-G.**

(18) Q Where is that institution located?

(19) **A It was in Long Island at the time.**

(20) Q Is it somewhere else now?

(21) **A I'm not sure.**

(22) Q Does it no longer exist?

(23) **A It might not.**

(24) Q In what area of study did you

(25) receive your BA?

(1) E. WARNDERS 36

(2) **A Just business.**

(3) Q Business?

(4) **A Business, yes.**

(5) Q Business administration or?

(6) **A That's right, business**

(7) **administration.**

(8) Q Did you graduate from high school?

(9) **A Yes, I did.**

(10) Q What was the name of the high

(11) school you attended?

(12) **A Kingwood High School.**

(13) Q Where is that located?

(14) **A That would be in Kingwood, Texas.**

(15) Q You went to high school in Texas?

(16) **A That's correct.**

(17) Q When did you obtain your bachelors

(18) degree from Dowling?

(19) **A I don't know, I was at FedEx and I**

(20) **finished off my degree. Honestly, I don't**

(21) **even know.**

(22) Q Was it within the last ten years,

(23) or something else?

(24) **A It could be possibly, yeah, maybe**

(25) **within the last ten years.**

(1) **E. WARNDERS** 37

(2) Q Okay. Do you have any other
(3) degrees?

(4) A No.

(5) Q Do you have any other professional
(6) certificates -- any professional certificates?

(7) A No.

(8) Q Or certifications?

(9) A No.

(10) Q You're currently employed by FedEx,
(11) correct?

(12) A That's correct.

(13) Q You've been with FedEx for 25
(14) years?

(15) A Yes, I have.

(16) Q How old were you when you started
(17) working for FedEx?

(18) A I am 49 now, so 24.

(19) Q What location did you start working
(20) for FedEx at?

(21) A I started in Texas at a location
(22) called HOUA. The identifier is HOUA.

(23) Q Prior to working for FedEx, did you
(24) have other employment?

(25) A Yes.

(1) **E. WARNDERS** 38

(2) Q What's the name of the employer
(3) that you had?

(4) A I was at UPS.

(5) Q How long did you work at UPS?

(6) A Four years.

(7) Q Prior to working at UPS, did you
(8) have other employment?

(9) A Dominoes, Continental Airlines, and
(10) that would be about it.

(11) Q Have you ever been a member of any
(12) union?

(13) A At UPS.

(14) Q Was that the last time you were in
(15) a union?

(16) A That's correct.

(17) Q What's the name of the union you
(18) were in at UPS?

(19) A I believe it was the Teamsters.

(20) MS. MASSIMI: Can you do me a favor
(21) and just speak up a little bit, sir, I am
(22) having a little difficulty hearing you,
(23) if you don't mind?

(24) THE WITNESS: Sure. No problem.

(25) A It's the Teamsters.

(1) **E. WARNDERS** 39

(2) Q Okay. Is that the only time you
(3) were in a union?

(4) A **That's correct.**

(5) Q Have you ever served in any branch
(6) of the military?

(7) A **No, I have not.**

(8) Q Have you ever served in law
(9) enforcement?

(10) A **No, I have not.**

(11) Q Have you ever applied for a job in
(12) law enforcement?

(13) A **No, I have not.**

(14) Q Do you have any family members who
(15) work for FedEx?

(16) A **No.**

(17) Q Why did you leave your job at UPS?

(18) A **Nepotism.**

(19) Q Can you explain what you mean by
(20) that?

(21) A **Well, my father-in-law was a high**
(22) **ranking individual in the company and when I**
(23) **got married it was time for me to leave.**

(24) Q I don't understand what you mean.
(25) Do you mean you were attempting to avoid the

(1) E. WARNDERS 40

(2) appearance of nepotism by leaving the job?

(3) A Once I got married I was in school
(4) at the time, and once I got married it was --
(5) there was no future of moving up because of
(6) nepotism, so I left UPS to go to FedEx.

(7) Q Why was there no future of moving
(8) up due to nepotism?

(9) A Because those were the rules back
(10) then at UPS; now the rules have changed.

(11) Q What were the rules at UPS at the
(12) time?

(13) A Like I just explained, I couldn't
(14) be related and move up in the company due to
(15) my father-in-law working in the company.

(16) MS. MASSIMI: You did not explain
(17) that, at least I did not hear you say
(18) that.

(19) THE WITNESS: Okay.

(20) Q So are you saying that at the time
(21) you worked at UPS there were rules that
(22) prohibited you from advancing as far as you
(23) wanted to go because you were related to
(24) someone who was higher up at the company?

(25) A That is correct.

(1) **E. WARNDERS** **41**

(2) Q Okay. Do you recall what those
(3) rules were specifically?

(4) A No. I was young, like I said, I
(5) left at 24-years-old.

(6) Q What was your father's position --
(7) what was your father-in-law's position at that
(8) company?

(9) THE WITNESS: At the time?

(10) MS. MASSIMI: Yes.

(11) A He was a district manager.

(12) Q Have you ever been subjected to any
(13) form of racism?

(14) A No.

(15) Q I'm sorry?

(16) A No.

(17) Q Have you ever witnessed racism?

(18) A I mean, yes.

(19) Q Can you describe for me some
(20) instances where you believe you witnessed
(21) racism?

(22) THE WITNESS: As far as what, give
(23) me an example. What do you mean
(24) detailed-wise?

(25) Q Have you ever witnessed racism

(1) E. WARNDERS 42

(2) against white people?

(3) A Racism against white people, yes.

(4) Q When was that?

(5) A When I was in high school.

(6) Q What happened then?

(7) A I don't remember the restaurant it

(8) was a fast food chain. I remember some

(9) individuals came in and they were, you know,

(10) making fun of the lady behind the counter.

(11) The next thing you know they grabbed her and

(12) they started beating her, and the cops were

(13) called; that was it. But we were young, I

(14) don't know exactly, we didn't -- and that was

(15) it.

(16) Q So what do you believe was racist

(17) about that situation?

(18) A Well, I think the individuals

(19) targeted her in some way and just I don't

(20) know. I don't know if it was because of her

(21) color, I don't know.

(22) Q When you say color what color was

(23) she?

(24) A She was Caucasian.

(25) Q What was the race of her

(1) E. WARNDERS 43

(2) assailants?

(3) A There was a Hispanic, there was
(4) black, I think that's about it. I mean it
(5) happened so fast, we were just sitting there
(6) eating and then everything just happened so
(7) quickly.

(8) Q Can you think of any other
(9) instances where you believe you've witnessed
(10) racism against white people?

(11) A No. Not off the top of my head,
(12) no.

(13) Q Do you believe that racism is a
(14) problem in this country?

(15) A Yes, I believe there is still a
(16) divide. Yes.

(17) Q What do you believe is the nature
(18) of that divide, or how would you describe that
(19) divide?

(20) A I think it's driven I can see it's
(21) driven by social media.

(22) Q What specifically on social media
(23) do you believe is driving that divide?

(24) A Nothing specific, just overall
(25) general, the way they take things that happen

(1) **E. WARNDERS** **44**

(2) **and they just magnify it to a larger degree**
(3) **and then there's, you know, conversations on**
(4) **both sides. Everyone's listening to reason**
(5) **what they believe is right, wrong.**

(6) Q When you say they take a specific
(7) incident and magnify it, what specifically are
(8) you referring to?

(9) A Talking to the social media, news
(10) channels, whatever.

(11) Q Do you believe that there are
(12) certain things that become magnified like
(13) certain categories of information that become
(14) magnified?

(15) A I believe so. I mean look at the
(16) presidential debates, the same thing, I think
(17) it's magnified.

(18) Q What do you think -- what
(19) presidential debates are you referring to?

(20) A Talking about Biden and Trump back
(21) in 2020 and then with upcoming elections
(22) coming up in '24.

(23) Q In 2020 what do you believe was
(24) magnified?

(25) **THE WITNESS: What do I believe was**

(1) **E. WARNDERS** 45

(2) **magnified?**

(3) **MS. MASSIMI: Yes, relating to the**
(4) **Biden, Trump.**

(5) **A I believe both sides were trying to**
(6) **magnify their sides, you know, and they're**
(7) **trying to make Biden look one-way and Trump**
(8) **look another way and try to sway the American**
(9) **people.**

(10) **Q Do you believe that certain things**
(11) **about Trump were unfairly portrayed related to**
(12) **that election?**

(13) **A I really don't have comments on**
(14) **anything related to that, I really don't. I**
(15) **don't comment, I don't talk about it. There's**
(16) **never any discussion, but I listen.**

(17) **Q But you do believe that racism is a**
(18) **problem in this country, correct?**

(19) **A Yes, I can see racism still being a**
(20) **problem, yes.**

(21) **Q What group of people do you believe**
(22) **are the biggest victims of racism in this**
(23) **country?**

(24) **A I honestly don't know, I don't know**
(25) **that statistic.**

(1) **E. WARNDERS** 46

(2) Q I'm asking you for your opinion and
(3) your perception based on your belief that
(4) racism is a problem in America.

(5) A **There is racism everywhere, all**
(6) **equal.**

(7) Q When you say equal do you mean that
(8) there is equal racism against all races of
(9) people by all races of people?

(10) A **To what level, to how much, I am**
(11) **not familiar. But there is racists**
(12) **everywhere. There is racism everywhere.**

(13) Q Do you believe there's racism on
(14) Long Island?

(15) A **I just said everywhere.**

(16) Q Do you believe there's racism on
(17) Long Island?

(18) A **Yes.**

(19) Q What type of racism do you believe
(20) exists on Long Island?

(21) A **The same as it does everywhere.**

(22) Q Which is what?

(23) A **What I just explained.**

(24) Q I don't believe that you did
(25) explain anything specific to racism on Long

(1) E. WARNDERS 47

(2) Island.

(3) A No matter what race you are there's
(4) always going to be racism.

(5) Q Do you believe that white people
(6) experience racism in this country?

(7) A Just like everybody else.

(8) Q Who do you believe are the
(9) perpetrators of racism against white folks in
(10) this country?

(11) A I think they all, everybody. It's
(12) the same, it's an equal. Whether you are
(13) black, white, Chinese, Caucasian, I think
(14) there's racism everywhere, and there's no
(15) specific identifier, I think it's all equal.

(16) Q Do you believe that sexism and
(17) misogyny are problems in this country?

(18) A I didn't even think about that, no.
(19) I have no comment on that.

(20) Q But racism you would say is an
(21) issue?

(22) A Racism is an issue, yes. I can
(23) say, yes, that's an ongoing issue. Yes.

(24) Q When you -- well, let me ask you
(25) this: When you had to leave UPS do you

(1) E. WARNDERS 48
(2) believe that race played a factor in that?
(3) **A Absolutely not.**
(4) Q Have you personally ever been
(5) subjected to racism?
(6) **A Not that I can recall.**
(7) Q Or racial discrimination?
(8) **A Not that I can recall, no.**
(9) Q What is racism in your own words?
(10) **THE WITNESS: What is racism?**
(11) **MS. MASSIMI: Racism.**
(12) **A It's a hatred towards another**
(13) **individual who's not of your race.**
(14) Q Okay. When you joined FedEx what
(15) was your title?
(16) **A So I was a courier when I joined**
(17) **FedEx.**
(18) **MS. MASSIMI: All right just give**
(19) **me one second.**
(20) **(Whereupon, a short recess was**
(21) **taken.)**
(22) Q You were hired as a courier?
(23) **A Yes.**
(24) Q How long did you hold that title?
(25) **A For about a year-and-two-months**

(1) **E. WARNDERS** 49

(2) **something; a little over a year.**

(3) Q At that point were you promoted?

(4) A No, I became what's called a swing
(5) driver.

(6) Q What is a swing driver?

(7) A It's basically like a vacation
(8) coverage driver, like, I don't have a specific
(9) route but, you know, I fill in when people go
(10) on vacation and there's a little bit of
(11) premium pay involved with that.

(12) Q How long did you hold that
(13) position?

(14) A Eight months, nine, ten months,
(15) something in there.

(16) MS. MASSIMI: Can you just speak up
(17) a little bit, sir, it's making it a
(18) little more difficult to conduct this,
(19) and believe it or not it will take us
(20) longer to complete this, if you can just
(21) speak up a little bit that would be
(22) helpful.

(23) THE WITNESS: Sure.

(24) A Ten months, somewhere around there.

(25) Q You were a swing driver for ten

(1) E. WARNDERS 50

(2) months?

(3) A Somewhere around there.

(4) Q At the end of that ten months did

(5) you receive a promotion?

(6) A Yeah, I was promoted to a manager.

(7) Q How long were you a manager?

(8) A Maybe eighteen years, seventeen,

(9) eighteen years.

(10) Q Did you receive any promotion

(11) during that 17 or 18 years?

(12) A Yes, I do.

(13) Q How many promotions did you

(14) receive?

(15) A Just one promotion.

(16) Q What was that promotion?

(17) A Senior manager.

(18) Q When did you receive that

(19) promotion?

(20) A Somewhere around September 2018.

(21) Q Is that your current position?

(22) A That is correct.

(23) Q Senior manager?

(24) A That's correct.

(25) Q What is your current title?

(1) E. WARNDERS 51

(2) **A Senior manager.**

(3) Q Okay. Eventually you transferred

(4) from Texas to New York; is that correct?

(5) **A That's correct.**

(6) Q What was your title when you

(7) received that transfer?

(8) **A From Texas to New York I was a**

(9) **courier.**

(10) Q When you were a swing driver was

(11) that in Texas or New York?

(12) **A That was in New York.**

(13) Q What location do you currently work

(14) at?

(15) **A LGA.**

(16) Q That's the full name LGA?

(17) **A LGA A, I mean, I guess.**

(18) Q Prior to working at LGA, have you

(19) been -- how long have you been at LGA?

(20) **A Since 2011.**

(21) Q Prior to LGA, what location were

(22) you at?

(23) **A ZYP A, and it was in Brooklyn.**

(24) **MR. MCGAHA: Do you need to take a**

(25) **break?**

(1) **E. WARNDERS** 52

(2) **THE WITNESS:** In about seven
(3) minutes I will have to take a restroom
(4) break.

(5) **MR. MCGAHA:** Can we take a break at
(6) 11:15?

(7) **MS. MASSIMI:** Yeah, that's fine.

(8) Q Have you ever been suspended from
(9) your job at FedEx?

(10) A Suspended from my job, that would
(11) be no.

(12) Q Have you ever received any writeups
(13) during your employment with FedEx?

(14) **THE WITNESS:** Writeups defining
(15) what?

(16) Q Well, how does FedEx record if an
(17) employee is being reprimanded or does
(18) something wrong, is that through some written
(19) record, or something else?

(20) **THE WITNESS:** So are you talking
(21) about a warning letter?

(22) **MS. MASSIMI:** Sure, yeah.

(23) Q Have you ever received a warning
(24) letter?

(25) A Yes, I have.

(1) **E. WARNDERS** 53

(2) Q How many times?

(3) A **Twice.**

(4) Q When was the last time you received
(5) a warning letter?

(6) A **Maybe 2011.**

(7) Q What was the reason for that
(8) warning letter?

(9) A **It was an HOS violation; hours of**
(10) **service.**

(11) Q What is that?

(12) A **It's when a driver violated either**
(13) **a ten hour rule, so they have to have ten**
(14) **hours off in between shifts before they come**
(15) **back, or if they exceeded fourteen hours from**
(16) **punch in to punch out.**

(17) Q So do you recall specifically what
(18) you had done to warrant this warning letter?

(19) A **It's just making sure we have**
(20) **processes in place to ensure that, that**
(21) **doesn't happen.**

(22) Q Prior to that, did you receive a
(23) warning letter for any purpose?

(24) A **No, both were HOS.**

(25) **MS. MASSIMI: Both were HOS.**

(1) **E. WARNDERS** 54

(2) Q All right, what happened with these
(3) two HOS, was it that you didn't have enough
(4) time off between shifts before you worked
(5) again, or what happened?

(6) A No, it wasn't me, it was one of my
(7) employees didn't have enough time off.

(8) Q Okay.

(9) A So either the employee clocked out
(10) late for whatever reason and then they came
(11) back the next day and they swiped in to start
(12) work; it's just DOT regulations that's all it
(13) is.

(14) MS. MASSIMI: Got it. Okay.

(15) Q DOT regulations, I'm sorry, DOT
(16) meaning what?

(17) A Department of transportation.

(18) MS. MASSIMI: Okay.

(19) Do you want to take a break now for
(20) twenty minutes?

(21) MR. MCGAHA: Yeah. Sure.

(22) MS. MASSIMI: Okay, we'll come back
(23) at 11:30.

(24) MR. MCGAHA: All right, thank you.

(25) (Whereupon, a short recess was

(1) **E. WARNDERS** 55

(2) **taken.)**

(3) Q Mr. Warnders, what is your current
(4) job title?

(5) A **Senior manager.**

(6) Q What locations are you responsible
(7) for?

(8) A **Just one location the LGA A**
(9) **station.**

(10) Q Do you have an office?

(11) A **Yes, I do.**

(12) Q Where is your office located?

(13) A **At LGA A, at the same location**
(14) **where I work.**

(15) Q Was that the case in the year 2021?

(16) A **That's correct.**

(17) Q Can you describe the layout of the
(18) LGA A station?

(19) A **It's a large warehouse with**
(20) **multiple belts with vehicles. And there's a**
(21) **mechanic area to the top left. There's a**
(22) **front counter area for customers. There's a**
(23) **service agent area check-in room. And then**
(24) **there's a hallway that goes towards the break**
(25) **room where there's multiple offices for the**

(1) **E. WARNDERS** 56

(2) **managers and then there's a break room.**

(3) Q Where is your office relative to
(4) the belts you just described?

(5) **THE WITNESS: What do you mean, as**
(6) **far as like what, exactly?**

(7) Q Like is it on the same floor, can
(8) you describe it in terms of distance from the
(9) belts?

(10) **A Everything is on the same floor.**
(11) **As far as, like, from the belt, it's I never**
(12) **measured it. I mean, it's probably, I mean, I**
(13) **can't see the belts from my office, and it's**
(14) **not like it's an open door. There's actually**
(15) **like a door you got to get through to get into**
(16) **the hallway to go to the offices.**

(17) **MS. MASSIMI: Right. Okay.**

(18) Q In 2021, did you share an office
(19) with anyone?

(20) **A No.**

(21) Q Do you have the same office today
(22) that you had back in 2021?

(23) **A Yes, I do.**

(24) Q Were you at work on May 18, 2021?

(25) **THE WITNESS: What day was that**

(1) **E. WARNDERS** 57

(2) **specifically?**

(3) **MS. MASSIMI: What day of the week?**

(4) **THE WITNESS: No, what day was**
(5) **that, was that, I mean, what's your**
(6) **point?**

(7) **Q Well, do you recall if you were at**
(8) **work on May 18, 2021?**

(9) **A Off the top of my head, no, I**
(10) **don't.**

(11) **Q Okay. As a senior manager at FedEx**
(12) **are you responsible for maintaining and**
(13) **implementing FedEx policies?**

(14) **A Maintaining and implementing, yes.**

(15) **Q As a senior manager at FedEx do you**
(16) **have an obligation to ensure that the work**
(17) **place is free from emotional violence?**

(18) **A Yeah, I mean we promote and foster,**
(19) **you know, culture of excellence with our**
(20) **people. Yeah.**

(21) **Q How do you do that?**

(22) **A We give out recognition like**
(23) **positive OLCCs, BZs, PSP awards. We do**
(24) **barbecues. We do a softball tournament. We**
(25) **do a basketball tournament.**

(1) **E. WARNDERS** 58

(2) Q What is emotional violence?

(3) A Emotional violence? I don't know.
(4) I never had emotional violence. I am assuming
(5) bullying could be emotional violence.

(6) Q If a FedEx worker witnesses
(7) violence, do they have an obligation to notify
(8) anyone?

(9) A Yes.

(10) Q Who does that worker have an
(11) obligation to notify?

(12) A Their immediate manager or
(13) management, HR. They get can notify HR. They
(14) can notify -- there's an alert line which is
(15) an anonymous alert line they can call. They
(16) could reach out to People Help.

(17) Q Anything else?

(18) A No.

(19) Q On the job at FedEx when actions or
(20) situations pose an immediate or imminent
(21) danger or where physical violence is about to
(22) occur do employees have an obligation to call
(23) 911?

(24) A No, there is not an obligation, it
(25) all depends on the situation.

(1) **E. WARNDERS** 59

(2) Q What are your job responsibilities?

(3) A I oversee the day-to-day
(4) operations.

(5) Q What does that entail?

(6) A Planning, budgeting. Like I said,
(7) like creating a culture of excellence, making
(8) sure my employees have the tools to do their
(9) job.

(10) Q Have you ever yelled at anyone at
(11) the LGA A station?

(12) THE WITNESS: I don't understand
(13) the question.

(14) Q Have you ever yelled at an employee
(15) at the LGA A station?

(16) THE WITNESS: Yelling, meaning
(17) what?

(18) Q Are you unable to answer the
(19) question?

(20) A That's correct.

(21) Q Have you ever spoken harshly to any
(22) employee at the LGA A station?

(23) A No.

(24) Q I'm sorry?

(25) A That would be no.

(1) **E. WARNDERS** 60

(2) Q Have you ever cursed or used any
(3) swear words towards any employee at the LGA A
(4) station?

(5) A Towards any employee that would be
(6) no.

(7) Q Can you give me any more
(8) information about your job responsibilities in
(9) May of 2021?

(10) A Same responsibilities I have now,
(11) as I stated.

(12) Q Which were what?

(13) A Planning, organizing, budgeting,
(14) taking care of my people, making sure they
(15) have the tools to do the job, providing great
(16) outstanding customer service.

(17) Q When you say taking care of your
(18) people what do you mean by that?

(19) A Exactly like what I explained
(20) earlier.

(21) Q What's that?

(22) A As in giving positive recognition.
(23) As in, you know, one-on-one meetings with the
(24) managers to make sure everything is good, go
(25) over whats, the TLAs.

(1) **E. WARNDERS** 61

(2) Q What were the names of the managers
(3) at the LGA A station in May of 2021?

(4) A I'd have to see a list.

(5) Q Was Henry Nunez a manager?

(6) A Yes.

(7) Q Can you think of the names of any
(8) other managers at that time?

(9) A Probably Frank Ontanada, probably
(10) Steve Pasqualicchio, probably Michael
(11) Christoff, Michael Bradley, maybe James
(12) Captanglis (phonetic).

(13) THE WITNESS: And when are we
(14) talking about in 2021?

(15) MS. MASSIMI: The names of the
(16) managers of the LGA A station?

(17) THE WITNESS: No, what -- when in
(18) 2021?

(19) MS. MASSIMI: May of 2021.

(20) THE WITNESS: Is May of 2021 is
(21) that when Kevin Campbell was terminated?

(22) MS. MASSIMI: Yes.

(23) A Okay. So Monty Bovell was there.
(24) Robert Mejia was there. I don't know how many
(25) I am up to now; I'm sorry, I wasn't keeping

(1) **E. WARNDERS** 62

(2) **count.**

(3) **BY MS. MASSIMI: That's okay.**

(4) Q Did any of those individuals ever
(5) complain to you about Kevin Campbell?

(6) **THE WITNESS: In regards to?**

(7) Q Anything?

(8) A Maybe in regards to maybe like when
(9) we were having him come back off the road and
(10) then we were giving him work inside the
(11) station, I think he didn't want to do the work
(12) that was inside the station so that might have
(13) been an issue that was being brought up.

(14) Q Who brought that up?

(15) A That would have been maybe Henry
(16) Nunez.

(17) Q What did Henry Nunez tell you?

(18) A I don't recall exactly specific, I
(19) just know that Kevin had a problem being
(20) picked up on his route and brought back to the
(21) station to complete the rest of his hours for
(22) the day at the station.

(23) Q When did he have that problem?

(24) A I don't recall.

(25) Q Who brought that problem to your

(1) E. WARNDERS 63

(2) attention?

(3) **A That would have been Henry Nunez.**

(4) Q Do you recall what he said to you
(5) about that?

(6) **A No.**

(7) Q Do you recall having a conversation
(8) with him about that?

(9) **A Like I just explained.**

(10) Q No, I don't think so you did, I am
(11) asking if you recall having a conversation
(12) with Henry Nunez about Kevin Campbell not
(13) wanting to finish his hours back at the
(14) station?

(15) **A Yes, in a general sense that's**
(16) **exactly what I just said; yes.**

(17) Q But you don't recall what Henry
(18) Nunez said to you?

(19) **A I just said he had an issue with**
(20) **him being picked up and being brought back to**
(21) **the station.**

(22) Q Why did he have an issue with that?

(23) **A Because he wanted to stay out there**
(24) **as a second man on the truck, but there was no**
(25) **work for him to stay out there as a second man**

(1) **E. WARNDERS** 64

(2) on the truck. After a certain point
(3) throughout the day once the mail most of it
(4) was delivered there was just minimal work for
(5) the rest of the day for the other driver.

(6) **MS. MASSIMI:** Hold on one second.

(7) (Whereupon, a short recess was
(8) taken.)

(9) Q Did you ever speak to Kevin
(10) Campbell about that?

(11) **THE WITNESS:** About?

(12) Q You said that Henry Nunez told you
(13) that Kevin Campbell had a problem finishing
(14) the rest of his hours back at the station,
(15) correct?

(16) A It could have been a conversation
(17) between me and Kevin, you know, me maybe
(18) explaining more of why we were giving him the
(19) hours inside the station possibly.

(20) Q Do you recall having that
(21) conversation with Kevin?

(22) A I don't think you understand, I
(23) have 10 managers, I have 250 employees, so for
(24) me to remember every little detail of
(25) something that happened three years ago it's

(1) **E. WARNDERS** 65

(2) **very hard.**

(3) Q I mean, can you say anything else
(4) about that?

(5) A **About Henry with coming in, no.**

(6) Q No, just about the number of people
(7) you were managing.

(8) **THE WITNESS: In regards to what.**

(9) Q You are trying to explain to me
(10) that it's difficult for you to remember
(11) details about every interaction you had three
(12) years ago, correct?

(13) A **That's correct.**

(14) Q So what about the number of people
(15) you were responsible for makes that difficult?

(16) A **You're questioning makes it**
(17) **difficult not me handling the situation, it's**
(18) **your questioning for me to remember.**

(19) Q What about my question is
(20) difficult?

(21) A **You're asking something specific,**
(22) **specific.**

(23) Q Okay. Well, my question is, do you
(24) recall speaking to Kevin Campbell about that?

(25) A **Maybe, I don't know.**

(1) **E. WARNDERS** 66

(2) Q Did Kevin Campbell initiate the
(3) conversation, or something else?

(4) A Yeah, I probably would have had a
(5) conversation with him, that's what I am trying
(6) to say. At some point he probably would have
(7) had a conversation with me.

(8) Q How many employees were at the LGA
(9) A station in 2021?

(10) A Probably the same amount. It could
(11) have been more that was during covid.

(12) Q When you say the same amount what
(13) amount is that, is that the two hundred
(14) something number you mentioned?

(15) A Maybe 250. It could have -- there
(16) was one point I was up to like 306, it all
(17) depends on what's going on with the volume.

(18) Q In May of 2021 or at any point in
(19) 2021, were there other FedEx employees at that
(20) station on your level, or were you the sole
(21) person at that rank?

(22) A No, I am responsible for that
(23) station.

(24) Q Only you?

(25) A Correct.

(1) **E. WARNDERS** 67

(2) Q So in other words, you were
(3) personally responsible for maybe,
(4) approximately, three hundred employees at that
(5) time?

(6) A I don't know exactly it ranges, it
(7) could be anywhere from 250 to 300. I don't
(8) know exactly where we were at that time.

(9) Q Has anyone ever complained to you
(10) about Henry Nunez?

(11) THE WITNESS: In regards to what?

(12) MS. MASSIMI: Anything.

(13) A No, not that I am aware of.

(14) Q You don't recall anyone complaining
(15) to you about Henry Nunez ever?

(16) A I don't know. I don't recall and
(17) you'd have to show me something for me to
(18) remember, something specific that can jog my
(19) memory.

(20) Q Do you personally remember ever
(21) having any conversation with Kevin Campbell at
(22) any point?

(23) THE WITNESS: You are saying in
(24) regards to?

(25) Q This is just a very general

(1) E. WARNDERS 68

(2) question. I am just asking if at any point --

(3) **A Yeah, I mean I talk to people all**
(4) **the time as they pass by, or if I see them,**
(5) **hey, how's it going, you know, simple things**
(6) **like that.**

(7) Q What was your personal impression
(8) of Kevin Campbell?

(9) **A Nothing, we were just trying to**
(10) **make him feel comfortable, you know, when he**
(11) **came over from T&T.**

(12) Q How would you describe him as a
(13) worker?

(14) **A He was good. He was a good worker,**
(15) **you know.**

(16) Q Did you have any personal issues
(17) with Kevin Campbell, or were your interactions
(18) always just kind of friendly, professional;
(19) how would you describe it?

(20) **A I guess just more a professional**
(21) **level. I mean, you know, I don't know --**
(22) **yeah, probably more professional.**

(23) Q Did you ever hear any complaints
(24) about Kevin Campbell from anyone other than
(25) what you've already described regarding Henry

(1) E. WARNDERS 69

(2) Nunez?

(3) A No, the only complaints I got was
(4) when I was in the GFT when I heard complaints.

(5) Q What complaints did you hear in the
(6) GFT?

(7) A Kevin made different references to
(8) things that were happening in the station and
(9) to him that he never reported.

(10) Q I'm actually asking something
(11) different which is, did you ever receive any
(12) complaints about Kevin Campbell from anyone,
(13) from any source, in other words, people saying
(14) Kevin is not doing his job, Kevin is causing
(15) problems, things like that?

(16) A I don't recall specifically.

(17) Q Well, just generally speaking, do
(18) you ever recall hearing anything about that
(19) other than what you described regarding Henry
(20) Nunez?

(21) A You would have to give me something
(22) specific because I really honestly don't know.

(23) Q I am not suggesting that there is
(24) anything specific; I am not suggesting that
(25) there is. I am asking you if you ever recall

(1) E. WARNDERS 70

(2) hearing that about Kevin Campbell?

(3) **THE WITNESS: Hearing what again?**

(4) **Repeat the question.**

(5) **MS. MASSIMI: Anything negative,**
(6) **any complaints about Kevin Campbell,**
(7) **other than what you testified from Henry**
(8) **Nunez.**

(9) Q Was Kevin Campbell a troublemaker?

(10) **A Troublemaker? I don't recall any**
(11) **trouble that he got into. I just recall his**
(12) **unwillingness to come back and work in the**
(13) **station because he wanted to stay on the route**
(14) **with the other driver; that was really**
(15) **probably the only issue I can recall.**

(16) Q When you say you recall his
(17) unwillingness to come back to the station are
(18) you saying that you instructed him to come
(19) back to the station and he refused to do that?

(20) **A First of all, I don't instruct. I**
(21) **manage managers, so my manager instructed.**

(22) Q Sir, this isn't a trick question.
(23) You just said you recall Kevin Campbell's
(24) unwillingness to come back to the station; is
(25) that correct?

(1) E. WARNDERS 71

(2) A Correct.

(3) Q Did he refuse to come back to the
(4) station after being instructed to do so?

(5) A He would leave.

(6) Q When you say he would leave what do
(7) you mean?

(8) A Meaning he wouldn't -- so he was a
(9) second person on the truck. He would go to
(10) the mall. And when the mall was completed
(11) around 12, 12:30 somewhere in there, another
(12) driver would swing by pick him up and bring
(13) him back. And then he would complete his
(14) hours inside the service agent area where he's
(15) handing out keys doing service agent work.
(16) But he wanted to stay on the route with the
(17) other driver because he was getting a lot more
(18) hours staying out there with the driver.

(19) Q Sir --

(20) A But he wasn't doing any work.

(21) Q Sir, a moment ago you said that you
(22) recall Kevin Campbell's willingness to come
(23) back to the station?

(24) A Yes.

(25) Q Did Kevin Campbell refuse

(1) E. WARNDERS 72

(2) instructions to return to the station?

(3) **A So the answer to that would be no.**
(4) **His unwillingness is still there, but he did**
(5) **return.**

(6) Q When you say unwillingness do you
(7) mean he did not want to go back to the
(8) station, but did so anyway?

(9) **A That's correct.**

(10) Q Okay. So he followed the
(11) instructions that he was given to come back to
(12) the station, correct?

(13) **A Correct.**

(14) Q And he completed his work, correct?

(15) **A Not all the time, no.**

(16) Q Sometimes he didn't complete his
(17) work?

(18) **A That's correct.**

(19) Q When was that?

(20) **A Henry said there was times when he**
(21) **left; he left early.**

(22) Q When was that?

(23) **A I have no idea.**

(24) Q But you remember Henry Nunez saying
(25) this?

(1) E. WARNDERS 73

(2) A Yes.

(3) Q On how many occasions did Henry
(4) Nunez tell you that?

(5) A I have no idea.

(6) Q Five times?

(7) A I have no idea.

(8) Q Ten times?

(9) A Like I said, I have no idea.

(10) Q Twenty times?

(11) A I have no idea.

(12) Q Fifty times?

(13) A I have no idea.

(14) Q A hundred times?

(15) A I have no idea.

(16) Q You don't know if Henry Nunez told
(17) you that Kevin Campbell left early from work a
(18) hundred times?

(19) A Correct.

(20) Q Would there be a record of this
(21) anywhere?

(22) THE WITNESS: A record of what?

(23) Q Your claim that you don't recall
(24) whether Henry Nunez told you that Kevin
(25) Campbell left work early a hundred times?

(1) E. WARNDERS 74

(2) A I don't.

(3) Q If Kevin Campbell left work early a
(4) hundred times without permission, would there
(5) be a record of this?

(6) A I don't know, he probably just
(7) punched out.

(8) Q So you didn't make a written record
(9) of the fact that he might have left early from
(10) work a hundred times?

(11) A Maybe the manager had a verbal
(12) discussion with him.

(13) Q Oh, maybe the manager had a verbal
(14) discussion with him and didn't put it in
(15) writing?

(16) A You keep saying a hundred times, I
(17) didn't agree to a hundred times. that's your
(18) words.

(19) Q Okay, so how many times did Henry
(20) Nunez tell you that Kevin Campbell left early
(21) from work?

(22) A Again, I have no idea.

(23) Q You have no idea, could it be a
(24) hundred times?

(25) A I have no idea.

(1) **E. WARNDERS** 75

(2) Q Could it be two hundred times?

(3) A I have no idea.

(4) Q So it's your testimony that it's
(5) possible that Henry Nunez told you that Kevin
(6) Campbell left early from work two hundred
(7) times?

(8) A No, it's not.

(9) Q Is it possible that Kevin Campbell
(10) left work early two hundred times without you
(11) knowing?

(12) A He reports to Henry Nunez and to
(13) Monty Bovell, so I don't know.

(14) Q Well, if, in fact, Kevin Campbell
(15) was leaving early from work, would Monty
(16) Bovell and Henry Nunez have an obligation to
(17) tell you?

(18) A Not necessarily because if he left
(19) on his own accord that just means he just
(20) left, that means if the work was there, it was
(21) work that we were giving him. It wasn't like
(22) he was delivering packages that was going to
(23) impact customers, so we were creating work for
(24) him.

(25) Q Was he completing that work?

(1) E. WARNDERS 76

(2) A I have no idea, not all the time.

(3) Q When you say not all the time what
(4) are the specific instances where you claim he
(5) wasn't completing his work?

(6) A Whether it's one instance or five
(7) instances I don't recall, I just know I was
(8) made aware of it at some point.

(9) Q You were made aware of it by Henry
(10) Nunez?

(11) A Could be, yes.

(12) Q Well, was it from Henry Nunez, or
(13) was it from someone else?

(14) A Well, he had multiple managers,
(15) right, so at some point he switched over to
(16) Monty Bovell, so I don't know. I don't recall
(17) maybe it was Henry Nunez. It probably -- it
(18) was Henry in the beginning. Did Monty Bovell
(19) complain, I don't know, I don't recall.

(20) Q So it's your testimony that Henry
(21) Nunez complained to you about Kevin Campbell
(22) not finishing his work?

(23) A That's correct.

(24) Q Did Henry Nunez complain to you
(25) about Kevin Campbell not wanting to return to

(1) E. WARNDERS 77

(2) the station from the truck?

(3) **A That's correct.**

(4) Q How many times did Henry Nunez

(5) complain to you about Kevin Campbell?

(6) **A I don't know.**

(7) Q Did you ever make a written record

(8) of these complaints from Henry Nunez?

(9) **A No.**

(10) Q What?

(11) **A That would be no.**

(12) Q Are you required to make a written

(13) record of these complaints?

(14) **A No.**

(15) Q Is anyone required to make a

(16) written record of these complaints?

(17) **A No, the managers just basically**

(18) **handle the situation with employees.**

(19) Q Did Kevin Campbell ever complain to

(20) you about Henry Nunez?

(21) **A Yes, one time he said -- one time**

(22) **specifically he did say he said that he was**

(23) **lazy and that was it. He said he was lazy.**

(24) Q When did you hear about that?

(25) **A I have no idea.**

(1) **E. WARNDERS** 78

(2) Q But it was prior to the GFT,
(3) correct?

(4) A Well, of course, because at the GFT
(5) he was already terminated.

(6) Q Did you respond to Kevin Campbell
(7) telling you that Henry Nunez had told him he
(8) was lazy?

(9) A Yes. I asked Henry why is he
(10) saying that you said he was lazy. And Henry
(11) responded that he told him he was going to be
(12) picking him up today he said because he didn't
(13) have somebody to pick him up or something like
(14) that. And he said -- and he gave him this
(15) look of like I don't want to be picked up, I
(16) want to just stay out there with the courier.
(17) And Henry said, listen, you can't be lazy.
(18) You can't be out there, I am trying to give
(19) you hours. Listen, I am going to pick you up
(20) and we are going to bring you back, and that's
(21) exactly what happened. And then that was it,
(22) that was really all I heard about it.

(23) Q Did you take any action with regard
(24) to that complaint from Kevin Campbell?

(25) A Yeah, I asked Henry did you say

(1) **E. WARNDERS** 79

(2) **that he was lazy. And he explained the story**
(3) **that I just explained.**

(4) Q Did you give Henry any instructions
(5) following his answer to you?

(6) A Meaning -- oh, yeah, I did. I
(7) might have said like, you know, you shouldn't
(8) call anybody lazy, you should just talk to him
(9) and just work it out with him.

(10) Q You believe you said that to Henry
(11) Nunez?

(12) A Yeah, I believe. Yeah, that's
(13) something I would say.

(14) Q Did you make any written record of
(15) this conversation with Henry Nunez?

(16) A No, I did not.

(17) Q Did Kevin Campbell ever complain to
(18) you about any inappropriate jokes from any
(19) other workers?

(20) A Yes.

(21) Q What are the complaints that he
(22) made to you?

(23) A It wasn't to me, it was basically
(24) to, I believe, Frank Ontanada in regards to
(25) the comments about Trayvon Morton and then him

(1) **E. WARNDERS** 80

(2) **washing his hands and making reference to the**
(3) **projects.**

(4) Q Were those complaints made to you
(5) or to someone else?

(6) A They were made to Frank Ontanada.
(7) Kevin could have, he could have come and told
(8) me the story at some point. You know, I don't
(9) know exactly the timeline, but I know it was
(10) made to Frank Ontanada.

(11) Q Prior to Kevin's termination?

(12) A This was -- yeah, this was all
(13) prior; yes. Of course, it's prior but when I
(14) don't recall.

(15) Q Did you make any -- well, I'm
(16) sorry.

(17) How did you learn that Kevin had
(18) made those complaints to Frank Ontanada?

(19) A Frank probably walked into my
(20) office or called me and said, hey, we got a
(21) situation, something like this along the
(22) lines. He said I got to get to the bottom, I
(23) got to figure out what's going on. And then
(24) it's like I said, I don't know if that's when
(25) Kevin came in and talked to me or didn't talk

(1) **E. WARNDERS** 81

(2) to me, or talked to me later, I don't recall.
(3) I don't recall the exact timeline, but it was
(4) something like that, something along those
(5) lines.

(6) Q Do you recall the year that Frank
(7) Ontanada told you about these complaints from
(8) Kevin Campbell?

(9) A No, I do not.

(10) Q Like 2018, 2019, 2020?

(11) A I don't know, I mean, there should
(12) be a record because the employee ended up
(13) getting a letter and a five day suspension, so
(14) whenever that took place.

(15) Q Whose the employee that got the
(16) letter?

(17) A Peter Lorenzi.

(18) Q Does he still work at the station?

(19) A Yes, he does.

(20) Q Do you recall with any more detail
(21) what Frank Ontanada reported to you about
(22) Kevin Campbell's complaints?

(23) A No, just something about the
(24) Trayvon Marton and then the washing of the
(25) hands with the projects, that was it. I mean

(1) **E. WARNDERS** 82

(2) **he came in, went back, I guess, talked to him,**
(3) **came back, got statements, reviewed video. I**
(4) **mean it was, you know.**

(5) Q What Kevin Campbell complained of
(6) regarding Peter Lorenzi turned out to be
(7) truthful, correct?

(8) A Oh, yes.

(9) Q After that, did you receive any
(10) other information from Kevin Campbell about
(11) complaints or any other complaints from Kevin
(12) Campbell?

(13) A No.

(14) Q After the incident with Peter
(15) Lorenzi, Kevin Campbell never complained to
(16) you again about any other racist incidents?

(17) A No. He admitted that in his GFT
(18) that he never notified his manager Monty
(19) Bovell, he never notified myself, and he never
(20) notified HR.

(21) MS. MASSIMI: And in his GFT he
(22) was -- go ahead.

(23) A And that's documented in the GFT.

(24) Q Nonetheless, in the GFT Kevin
(25) Campbell alleges other instances of racism,

(1) E. WARNDERS 83

(2) right?

(3) **A Right, in that GFT; yes.**

(4) Q And do you believe those
(5) descriptions from Kevin Campbell are truthful?

(6) **MR. MCGAHA: Objection to the form.**

(7) **You can answer if you know the**
(8) **answer.**

(9) **THE WITNESS: No, I have no idea.**

(10) Q Have you ever known Kevin Campbell
(11) to be a liar?

(12) **MR. MCGAHA: Objection to the form.**

(13) **You can answer.**

(14) **A I don't know him that well to make**
(15) **that determination.**

(16) Q Okay. Have you ever caught him in
(17) a lie, or has anyone ever told you that he's a
(18) dishonest person?

(19) **A I don't recall.**

(20) Q Okay. Do you know if in May of
(21) 2021 or 2021 in general racist jokes took
(22) place at the LGA A station?

(23) **A No, I don't.**

(24) Q You don't know?

(25) **A That was no, I'm sorry. I said no.**

(1) **E. WARNDERS** 84

(2) **MS. MASSIMI:** That's okay, I just
(3) want to make sure the court reporter is
(4) getting it.

(5) **THE WITNESS:** Because you were
(6) looking at me and that's why I was
(7) thinking did you hear me or not.

(8) **MS. MASSIMI:** Well, it's hard to
(9) tell. I was trying to see if the court
(10) reporter caught it, but yeah.

(11) **Q** Can you define discrimination?

(12) **A** Discrimination it would be -- it
(13) would be like a wrongdoing to a group of
(14) employees based on basically, you know,
(15) religion, race, color, sex. I mean it can be
(16) all encompassing this, but a group, a group of
(17) people.

(18) **Q** Can you define retaliation?

(19) **A** Retaliation, I guess the best word
(20) would be, like, revenge like.

(21) **Q** During your time working for FedEx
(22) did FedEx ever offer training to you regarding
(23) employment discrimination?

(24) **A** I believe they have, yes.

(25) **Q** Can you describe that training?

(1) E. WARNDERS 85

(2) A It's an annual training.

(3) THE WITNESS: Describe it as in
(4) what?

(5) Q What do you do, is it material that
(6) you have to read, is it a video that you have
(7) to watch?

(8) A Yeah, they call FLC. It's a
(9) training program you got to sign into and then
(10) there could be multiple questions, scenarios
(11) they put you through and then you get scored
(12) on that in order to pass.

(13) Q Have you passed your most recent
(14) discrimination -- antidiscrimination training?

(15) A Yes, you have to pass.

(16) Q Does FedEx have a policy against
(17) discrimination?

(18) A Yes.

(19) Q What is their policy?

(20) MR. MCGAHA: Objection to the form.

(21) A You would have to show me which
(22) policy it falls under, but there's a multitude
(23) of policies.

(24) Q It's safe to say you don't memorize
(25) these policies, you refer to them as needed,

(1) E. WARNDERS 86

(2) correct?

(3) **A Yeah, that's correct.**

(4) Q Without looking at the policies,
(5) can you give me a general description of
(6) FedEx's position on antidiscrimination?

(7) **A Antidiscrimination, well, it's like**
(8) **what I just said, it's basically lumping a**
(9) **group of individuals and discriminating, you**
(10) **know, treating them differently than the rest**
(11) **of the people based on race, religion, sex.**

(12) Q Does FedEx have a procedure by
(13) which employees must complain of
(14) discrimination?

(15) **A Well, if there's any -- yeah, you**
(16) **can notify your manager. You can call HR,**
(17) **which is posted in the break room. You could**
(18) **use the alert line which is anonymous so you**
(19) **don't even have to give your name. And you**
(20) **could reach out to People Help which is a**
(21) **program that we have.**

(22) Q Say that last part again.

(23) **A People Help.**

(24) Q Which is a program you have; is
(25) that what you said?

(1) E. WARNDERS 87

(2) A A program we have, yeah, in case
(3) somebody needed help.

(4) Q Okay. Is there a handbook for
(5) managers such as yourself at FedEx?

(6) A Handbook for managers? No, there
(7) is nothing, no handbook, it's just all online
(8) training that we get.

(9) Q Is there an employee handbook?

(10) A There is an employee handbook, but
(11) I don't know if that's online anymore, I don't
(12) know. I don't know if it's online or if it's
(13) something they're handed.

(14) Q Does the employee handbook contain
(15) guidelines for managers such as yourself, or
(16) does that just apply to a different class of
(17) employees?

(18) A I couldn't answer that.

(19) Q Okay. Do you have a personnel
(20) file?

(21) A Yes.

(22) Q Do you know the name of the
(23) plaintiff in this case?

(24) A Kevin Campbell.

(25) Q Can you describe his physical

(1) E. WARNDERS 88

(2) appearance?

(3) A Probably mid twenty, early
(4) thirties, male, black.

(5) Q How do you know Kevin Campbell, is
(6) that solely through him working at the LGA A
(7) Station that you manage?

(8) A That's correct.

(9) MS. MASSIMI: Ow many years did you
(10) work with Kevin Campbell at that station.
(11) Do me a favor speak up, I am really not
(12) trying to keep you all day, sir. I think
(13) you will be out of here quicker than you
(14) realize but I do need you to speak up
(15) just so the court reporter can hear you.
(16) I am having trouble hearing you and I can
(17) tell he is having some trouble hearing
(18) you. Okay?

(19) THE WITNESS: All right. I
(20) apologize.

(21) MS. MASSIMI: I don't want to feel
(22) like you are shouting, it's okay, but I
(23) truly am having some trouble hearing you
(24) and I think the court reporter is too.

(25) THE WITNESS: Okay. Well, can you

(1) **E. WARNDERS** 89

(2) **repeat the question?**

(3) **BY MS. MASSIMI: Yes. Absolutely.**

(4) Q How do you know Kevin Campbell, is
(5) that solely through your working relationship
(6) at the LGA A Station?

(7) A **That's correct.**

(8) Q Do you have an understanding of
(9) what Mr. Campbell's allegations are in this
(10) case?

(11) A **Yes, I've been briefed. Yes.**

(12) Q Well, I don't want you to tell me
(13) necessarily anything your attorney told you,
(14) but have you reviewed the complaint in this
(15) case?

(16) A **In regards to -- no, I have not.**
(17) **No.**

(18) Q Okay. But do you understand, are
(19) you aware of what Mr. Campbell is alleging in
(20) this case?

(21) A **Racial discrimination.**

(22) **BY MS. MASSIMI: Right. Okay.**

(23) Q Do you believe that he's lying
(24) about the discrimination?

(25) A **I don't -- there's no merit to what**

(1) **E. WARNDERS** 90

(2) he's saying because he never brought it up.
(3) And it's only been brought up after he was
(4) terminated, so it's really hard to believe at
(5) that point. With all the tools they can use
(6) especially through the alert line where it's
(7) anonymous if something was going on, it
(8) doesn't make any sense.

(9) Q What specifically do you believe he
(10) is -- what specifically do you believe he is
(11) alleging that there is no merit to?

(12) A I guess all the allegations he's
(13) stated.

(14) Q Well, some of the allegations that
(15) he stated you have agreed took place, correct?

(16) THE WITNESS: I don't know, exactly
(17) what?

(18) Q The situation with Peter Lorenzi
(19) happened, right?

(20) A Right.

(21) Q Monty Bovell according to you told
(22) you that he called Kevin Campbell lazy,
(23) correct?

(24) THE WITNESS: Monty Bovell?

(25) Q I'm sorry, Henry Nunez, you have

(1) E. WARNDERS 91

(2) said told you that he called Kevin Campbell
(3) lazy, correct?

(4) **A Correct.**

(5) Q So you agree that those statements,
(6) generally speaking, are truthful or have
(7) merit, correct?

(8) **A Yes, from what -- yes, from what I**
(9) **said, exactly, yes.**

(10) Q Right, so what are the allegations
(11) that he is making, that Mr. Campbell is making
(12) that you believe do not have merit?

(13) **MR. MCGAHA: Objection to the form.**

(14) **A Because it's brought up after he's**
(15) **terminated. You know the first day in**
(16) **workplace violence is what, it's to prevent**
(17) **workplace violence you are supposed to report.**
(18) **You are supposed to report, and that was never**
(19) **done. Discrimination never reported except**
(20) **for that one instance.**

(21) Q If a manager observes
(22) discrimination taking place are they required
(23) to take action?

(24) **A Yes, absolutely.**

(25) Q A manager or a supervisor if they

(1) E. WARNDERS 92

(2) observe discriminatory conduct between workers
(3) are they required to report it?

(4) **A Absolutely.**

(5) Q Other than what you've already
(6) described here regarding Kevin Campbell, have
(7) you ever received any reports of
(8) discrimination taking place at the LGA A
(9) Station?

(10) **A Any reports, not that I can recall,**
(11) **no.**

(12) Q Okay. When you say that -- I think
(13) you said something like he's supposed to
(14) report workplace violence; is that correct?

(15) **A Correct.**

(16) Q What are you referring to?

(17) **A I am referring to everything,**
(18) **everything that he's saying. He's saying that**
(19) **what, he said that in his statements, which I**
(20) **have seen, that he alleged, he alleged that**
(21) **something with the mechanic, something with**
(22) **another employee he alleged that, that -- he**
(23) **alleged that Augusto Alzate was cursing at him**
(24) **continuously day after day.**
(25) **BY THE WITNESS: A-L-Z-A-T-E, that's his last name.**

(1) **E. WARNDERS** 93

(2) Q Okay. And?

(3) A And that's it. It's just I don't
(4) understand why things wouldn't be reported.

(5) Q Do you wish that Kevin Campbell had
(6) complained to you about the discrimination he
(7) was experiencing?

(8) THE WITNESS: To me or to my
(9) manager?

(10) MS. MASSIMI: To anyone.

(11) A I mean the managers manage the
(12) employees, I manage the managers, so yes.
(13) Yeah, I mean, if I was his only hope if he
(14) already tried to talk to his manager, then he
(15) would come see me.

(16) Q Okay. Do you know who made the
(17) decision to terminate Kevin Campbell's
(18) employment?

(19) A Yes, the determination came from
(20) Monty Bovell his manager.

(21) Q Monty Bovell made the final
(22) determination to terminate Kevin Campbell's
(23) employment?

(24) A Monty Bovell was the one that
(25) terminated Kevin Campbell.

(1) **E. WARNDERS** 94

(2) Q So I'm not asking who delivered the
(3) message, I'm saying who made the decision the
(4) ultimate decision to terminate Kevin
(5) Campbell's employment?

(6) A The decision is based on a lot. He
(7) gathers all the evidence, so he gathers
(8) statements, consults with HR. He reviews
(9) security footage. He listened to the
(10) transcript, or he read the transcripts, I'm
(11) sorry, from our security specialists. And
(12) based on those accounts, you know, then he
(13) presents that to me. And he says listen this
(14) is the aggressor, this is what happened.
(15) This, you know, I mean it was pretty cut and
(16) dry with Alzate. You know with Kevin Campbell
(17) when you see him become the aggressor in the
(18) situation and to shoulder bump him and when we
(19) looked at future statements and stuff it was
(20) determined that, you know, he was in violation
(21) of the workplace violence. We have zero
(22) tolerance for that especially as it happened
(23) on the a.m. sort in the middle of the whole
(24) sort going on with employees around.

(25) Q The question was who made the final

(1) E. WARNDERS 95
(2) decision to terminate Kevin Campbell's
(3) employment?
(4) **A That would be Monty Bovell.**
(5) Q Is Monty Bovell working at FedEx --
(6) **A No.**
(7) Q -- still.
(8) **A No, he is not.**
(9) Q Why not?
(10) **A He's just no longer with us.**
(11) **MR. MCGAHA: You can answer.**
(12) **THE WITNESS: Okay. Yeah, I didn't**
(13) **know if I was allowed to talk about it.**
(14) **A Yeah, he's been terminated.**
(15) Q Why?
(16) **A He got terminated for**
(17) **falsification.**
(18) Q Falsification of what?
(19) **A He was falsifying service to our**
(20) **customers on Saturdays.**
(21) Q What do you mean he was falsifying
(22) service, what was he doing?
(23) **A He was protecting service, meaning**
(24) **he was -- packages were not delivered on time**
(25) **and then he was falsifying that information to**

(1) **E. WARNDERS** 96

(2) **make it look like it was on time or an**
(3) **exception was okay.**

(4) Q When did he start doing that?

(5) **THE WITNESS: I mean -- do you have**
(6) **a date when do you know when he was**
(7) **terminated?**

(8) **MR. MCGAHA: I can't answer.**

(9) Q Do you know when he was terminated?

(10) **A No, I don't know, but it was**
(11) **several months prior to his termination.**

(12) Q Did you have to approve his -- I'm
(13) sorry, what, it was several months prior to
(14) his termination?

(15) **A Correct.**

(16) Q What do you mean, that that's when
(17) he started doing this thing that you're saying
(18) he was doing?

(19) **A That's what you asked me, yes.**

(20) Q Okay. Did you approve the decision
(21) to terminate Kevin Campbell?

(22) **A By the uphold, yes; it's called**
(23) **upholding. So Monty Bovell terminated him. I**
(24) **agreed, I reread everything. I went over**
(25) **everything just to make sure nothing was**

(1) **E. WARNDERS** 97

(2) missed. I agreed upon it and then he was able
(3) to GFT it which he was able to then present
(4) whatever evidence he wanted to present to my
(5) boss.

(6) Q Did you review this information
(7) prior to him being terminated?

(8) A No, I've seen some stuff that was
(9) coming, yes.

(10) Q Did you approve the decision to
(11) terminate him before he was terminated?

(12) MR. MCGAHA: Can you hear us?

(13) MS. MASSIMI: Yes.

(14) MR. MCGAHA: Hello? Can you hear
(15) us?

(16) MS. MASSIMI: Yes. Can you hear
(17) us?

(18) MR. MCGAHA: Yes; sorry about that.

(19) Q Did you approve the decision to
(20) terminate Kevin Campbell's employment before
(21) he was terminated?

(22) MS. MASSIMI: I can't hear you.

(23) MR. MCGAHA: I'm sorry we are going
(24) to leave and come back; we are having
(25) technical difficulties. One second.

(1) **E. WARNDERS** 98

(2) (Whereupon, a short recess was
(3) taken.)

(4) **MR. MCGAHA:** I'm sorry about that.

(5) **MS. MASSIMI:** I can hear you.

(6) Q Okay, so the question I'm asking
(7) is, did you approve the decision to terminate
(8) Kevin Campbell before he was terminated?

(9) A I mean, I looked at evidence and
(10) stuff prior, and I mean, yeah, I mean, I seen
(11) where this was headed, yes. But it was Monty
(12) Bovell that terminated Kevin Campbell.

(13) Q I understand that your saying that
(14) Monty Bovell delivered the message, but isn't
(15) it true that you instructed him to terminate
(16) Kevin Campbell?

(17) **THE WITNESS:** Why would he say
(18) that?

(19) **MS. MASSIMI:** Just discovery that I
(20) received in this case.

(21) A No.

(22) **MR. MCGAHA:** Is there a document
(23) that you are referring to Ms. Massimi?

(24) **MS. MASSIMI:** I mean I am getting
(25) this information from documents, from

(1) **E. WARNDERS** 99

(2) **your documents, yes.**

(3) Q So is it your testimony that Monty
(4) Bovell terminated Kevin Campbell without your
(5) permission?

(6) A There's guidance that I can give my
(7) managers just like they reach out to HR. I'm
(8) a support system while they're doing their
(9) investigation.

(10) Q Did you give Monty Bovell guidance
(11) regarding Kevin Campbell's termination?

(12) A I would have to see something in
(13) regards to what you are specifically talking
(14) about, I don't know a timeline, like Monty
(15) Bovell might have already come to me and said,
(16) this is the aggressor we're going to be
(17) terminating. And I might have said, okay, we
(18) move forward to terminate.

(19) Q So it's your testimony that Monty
(20) Bovell came to you and said Kevin Campbell is
(21) the aggressor?

(22) A Yes.

(23) Q That's your testimony?

(24) A Yes, I mean we all saw the
(25) aggression, yes.

(1) **E. WARNDERS** 100

(2) Q What did you see?

(3) A I saw him step towards Alzate when
(4) he should have walked away. So he said there
(5) was a box that was being pushed up the belt,
(6) it tapped his arm, instead of walking away and
(7) defusing the situation and immediately getting
(8) a manager, he in turn stepped towards Alzate,
(9) chest bumped him and then started cursing --
(10) they were going back and forth cursing at each
(11) other. And he put himself in an aggressive
(12) state and backed Alzate up against the belt
(13) and then Alzate pulled out the razor.

(14) Q Did James Cahill ever tell you that
(15) the incident started when Alzate approached
(16) Campbell's work area in a clearly agitated
(17) state?

(18) A Right, yeah, I read that.

(19) Q Do you believe that, that is true?

(20) A Well, according to the surveillance
(21) you do see his arms moving around, yes.

(22) Q Whose arms?

(23) A Alzate's.

(24) Q That's before Kevin Campbell did
(25) anything, correct?

(1) E. WARNDERS 101

(2) **A I don't have the video right in**
(3) **front of me, but yes.**

(4) Q Right, so it is correct that the
(5) video shows Alzate approaching Campbell's work
(6) area in a clearly agitated state flailing his
(7) arms and pushing several packages in
(8) Campbell's direction; is that correct?

(9) **A That sounds about correct.**

(10) Q And it's correct that at least one
(11) of those boxes hit Campbell, correct?

(12) **A In his arm, yes, correct.**

(13) Q Based on that information it's
(14) still your testimony that Kevin Campbell was
(15) the aggressor?

(16) **A Yes.**

(17) Q How?

(18) **A Because he could have walked away**
(19) **from that situation. He wasn't backed into a**
(20) **corner, he could have walked away from that**
(21) **situation and immediately got a manager.**

(22) Q Sir --

(23) **A And then he would be good to go.**

(24) Q Sir, was Alzate behaving in an
(25) aggressive manner?

(1) E. WARNDERS 102

(2) A Well, according to Kevin, Kevin's
(3) own words that this was a normal thing that
(4) they had going on between the two of them.

(5) Q Sir, did James Cahill send you a
(6) report that said the incident started when
(7) Alzate approached Campbell's work area in a
(8) clearly agitated state, flailing his arms and
(9) pushing several packages in Campbell's
(10) direction?

(11) A I read the report.

(12) Q Did you receive that information?

(13) A I read that report, yes.

(14) Q Knowing that information it's your
(15) testimony that Kevin Campbell was the initial
(16) aggressor in this situation?

(17) A I didn't say the initial, I said he
(18) was the aggressor.

(19) Q Let's just put it this way, who
(20) started this?

(21) A Well, I mean if you are looking
(22) into everything, what Alzate's point of view
(23) was, is that Kevin Campbell's responsibility
(24) was to push the packages to the belt onto the
(25) T belt. He was in turn letting packages go by

(1) **E. WARNDERS** 103

(2) **and then Augusto had to go and pick up all**
(3) **those boxes and bring them then back to where**
(4) **Kevin was standing to put them on that belt to**
(5) **push them down the belt.**

(6) Q And based on your statement or
(7) based on Alzate's allegation that Campbell
(8) wasn't doing his job, you believe that Kevin
(9) Campbell deserved Alzate's approaching his
(10) work area in an agitated state?

(11) **MR. MCGAHA: Object to the form.**

(12) **A No.**

(13) Q My question was, who started the
(14) physical altercation?

(15) **A It would be Alzate started it, but**
(16) **like I said, the aggressor was Kevin Campbell.**

(17) **MS. MASSIMI: A-U-G-U-S-T-O Alzate.**

(18) Q So let me ask you this, sir, can
(19) you define the word incite?

(20) **THE WITNESS: Incite?**

(21) **MS. MASSIMI: Yes.**

(22) **A No, I can't.**

(23) Q Well, you agree that Alzate started
(24) the physical altercation, correct?

(25) **A I agree.**

(1) **E. WARNDERS** 104

(2) Q Do you believe that Alzate's
(3) actions incited the physical altercation?

(4) A No. It's like I said there is zero
(5) tolerance for workplace violence. Kevin
(6) Campbell should have walked away and notified
(7) a manager; it's that simple.

(8) Q Do you believe that Augusto Alzate
(9) incited the physical altercation?

(10) MR. MCGAHA: Object to the form.

(11) A Do I believe he incited it? I
(12) believe he started it.

(13) Q Do you believe that Alzate
(14) encouraged the physical altercation?

(15) A I can't speak to that, I really
(16) don't know what was going through Alzate's
(17) intentions.

(18) Q Okay. Were his actions acceptable?

(19) A Absolutely not.

(20) Q What about Alzate's actions were
(21) unacceptable?

(22) A Moving a box hitting another
(23) employee, causing a scene on my sword, causing
(24) whatever kind of language was going back and
(25) forth between the two of them, it was all

(1) **E. WARNDERS** 105

(2) **unacceptable, pulling a box cutter completely**
(3) **unacceptable. That's it.**

(4) Q Do you know whether James Cahill
(5) ever issued a report stating that Alzate and
(6) Campbell were terminated at the direction of
(7) Warnders for violation of FedEx Express policy
(8) 2-5?

(9) A I don't know he said that probably
(10) in all his reports.

(11) Q I'm sorry?

(12) A He puts that in all his reports.

(13) Q Puts what in all his reports?

(14) A What you just said according to
(15) him.

(16) Q James Cahill puts in all of his
(17) reports that Eric Warnders directed the
(18) termination of an employee pursuant to FedEx
(19) policy 2-5?

(20) A Right. So if my manager made that
(21) determination, it goes to me and then I uphold
(22) it and then it goes to my boss.

(23) Q How many reports has Cahill written
(24) this in?

(25) A I don't know.

(1) **E. WARNDERS** 106

(2) Q How many workplace violence
(3) investigations are conducted at the LGA A
(4) Station on a monthly basis?

(5) A **It's not workplace violence, it's**
(6) **any investigation into anything; it could be**
(7) **theft, could be whatever.**

(8) Q How many workplace violence
(9) investigations are there on a monthly basis at
(10) the LGA A station?

(11) A **I don't know of any. I couldn't**
(12) **even recall the last time there was one.**

(13) Q Was it after this incident with
(14) Kevin Campbell and Alzate?

(15) **THE WITNESS: That what was? What**
(16) **was after, I am asking specific?**

(17) Q Were there any workplace violence
(18) investigations that took place after Kevin
(19) Campbell's termination?

(20) A **Not that I recall, no.**

(21) Q Did you approve Kevin Campbell's
(22) termination before he was terminated?

(23) **MR. MCGAHA: Object to the form.**

(24) A **You are not listening. I am trying**
(25) **to say that conversations happen with the**

(1) **E. WARNDERS** 107

(2) **managers. They say yeah, we are going to go**
(3) **forward with termination. I could say, okay,**
(4) **I agree with that termination.**

(5) Q Is that what happened here?

(6) A I don't know. I don't know exactly
(7) what happened there, but I'm telling you right
(8) now is that Monty Bovell terminated him after
(9) he reached out to HR, after he reached out to
(10) me to make sure he's guiding through
(11) everything, after he reviewed security,
(12) reviewed footage, and that's what happened
(13) there.

(14) Q When you say he reached out to you
(15) what did he speak to you about when he reached
(16) out to you?

(17) A Consulted me on what's going on and
(18) did you see Jimmy's report, and did you see
(19) the footage, and, you know, stuff like that.

(20) Q What did he say to you
(21) specifically?

(22) A I can't recall.

(23) Q And what did you say to him?

(24) A I can't recall.

(25) Q Do you recall telling him that it

(1) E. WARNDERS 108
(2) would be proper to terminate Kevin Campbell?
(3) A I don't recall that.
(4) Q Well, do you believe that the
(5) termination was justified?
(6) A Yes, I do.
(7) Q Do you recall --
(8) A Otherwise else it wouldn't have
(9) went passed me.
(10) Q That's what I am asking, sir, did
(11) you approve the decision to terminate Kevin
(12) Campbell before the message of his termination
(13) was communicated to him?
(14) MR. MCGAHA: Object to the form.
(15) You can answer.
(16) A No, no.
(17) THE WITNESS: Before it was
(18) communicated to who?
(19) Q Sir, this is not a trick question.
(20) I'm asking you if you approved Kevin
(21) Campbell's termination before he was
(22) terminated?
(23) A Monty Bovell said I'm going to
(24) terminate. I agreed with that assessment. So
(25) then he puts the paper out. He terminates

(1) **E. WARNDERS** 109

(2) him. He brings the employee in. And then it
(3) gets to my desk. And then I'm okay with it
(4) and then I send it up.

(5) Q Say that again.

(6) A Monty Bovell he does all the
(7) research, right? Monty Bovell then, you know,
(8) after consulting everybody and figuring this
(9) out, he looks at policy, he says, yes, we are
(10) going to terminate. He terminates. But
(11) there's been discussion already, yes.

(12) Q When you say there's been
(13) discussion already what was the discussion?

(14) A I don't recall.

(15) Q You don't recall what the
(16) discussion was with Monty Bovell regarding
(17) Kevin Campbell?

(18) A I don't recall specifically. I
(19) know there was probably some discussion about
(20) the findings about did you see the video. Yes
(21) I, saw video. Did you see who was in the
(22) video. Yes. Did we get statements from the
(23) people that were in the video. Okay, yes, we
(24) got statements, you know, those kind of
(25) things.

(1) **E. WARNDERS** 110

(2) Q Do you recall specifically what was
(3) said?

(4) A I just said exactly what I said.

(5) Q Walk me through the process again.
(6) How did it come to be that you reviewed this
(7) decision to terminate Kevin Campbell?

(8) A Security sends us the interview.
(9) We pull all the statements from all the
(10) employees. We look at the video. We review
(11) the video. We reach out to HR what's policy,
(12) go through that, make sure we're all on the
(13) same page. And then he then says you know
(14) what, we're going to terminate based on all
(15) this information. I said I agree with that, I
(16) don't think there's anything that's going to
(17) go the other way. So he terminates the
(18) employee. It comes to my desk. I agree with
(19) it. It goes up. It goes up to my boss and
(20) that's it.

(21) Q What does he put on your desk?

(22) THE WITNESS: What do you mean what
(23) does he put on my desk?

(24) Q Didn't you just say something comes
(25) across your desk?

(1) E. WARNDERS 111

(2) A Yeah, that's just figuratively
(3) speaking.

(4) Q What happened, what actually
(5) happened? You had a conversation him with
(6) him, correct with Monty Bovell?

(7) A Correct. Yes.

(8) Q What's the next thing that happened
(9) regarding the termination of Kevin Campbell?

(10) A I don't know, he was suspended, he
(11) was terminated by Monty Bovell. And then it
(12) comes to my desk. And it's, like I said, I
(13) then review, make sure there's no missed
(14) things. I go through everything, yup, we're
(15) good here, we're good here, we're good here.
(16) Okay, and that's it. And then the employee
(17) then has an opportunity to GFT it when he was
(18) terminated and that goes to the Step One GFT
(19) with my boss. And then at that point he's
(20) able to review and bring whatever else he
(21) wants to bring to that step.

(22) Q Did you review the propriety of
(23) Kevin Campbell's termination after he was
(24) terminated or before he was terminated?

(25) A It's like I said, managers are

(1) **E. WARNDERS** 112

(2) **reaching out to all sources, HR, they're**
(3) **interviewing, they're interviewing the**
(4) **witnesses, they're reviewing the tape.**
(5) **They're asking questions for guidance, stuff**
(6) **like this, yes.**

(7) **Q Asking questions to who?**

(8) **A To me, I'm his district manager.**

(9) **Q If you had said, no, we are not**
(10) **going to terminate him, would he still have**
(11) **the authority to terminate Kevin Campbell?**

(12) **A If I would have said, no, we are**
(13) **not going to terminate, he would have to give**
(14) **me a great reason why we weren't going to**
(15) **terminate.**

(16) **Q Do you know whether Monty Bovell,**
(17) **in fact, told Kevin Campbell to GFT his**
(18) **termination?**

(19) **A We always encourage GFTs.**

(20) **Q Why is that?**

(21) **A That's just part of our policy. We**
(22) **always encourage an employee to GFT. If they**
(23) **fell they are treating unfairly, we expect you**
(24) **to GFT it and take it to the next step and**
(25) **present your argument there.**

(1) **E. WARNDERS** **113**

(2) Q Okay. Do you believe that Kevin
(3) Campbell is a dangerous person?

(4) **MR. MCGAHA: Object to the form.**

(5) A I don't know him like that.

(6) Q Well, based on what you know do you
(7) believe he's a dangerous person?

(8) **MR. MCGAHA: Object to the form.**

(9) A I can't speak to that.

(10) Q Kevin Campbell deescalated this
(11) encounter with Augusto Alzate, did he not?

(12) **MR. MCGAHA: Object to the form.**

(13) A No, he did not.

(14) Q Please explain to me what you
(15) believe happened.

(16) A Deescalating a situation would be
(17) as soon as either at the point where he got
(18) hit on the wrist with the box or the arm or
(19) whatever you want to call it, he should have
(20) walked away. He was not in a corner. He had
(21) free range to walk away and then notify a
(22) manager of the situation. And that's
(23) deescalating. The situation would have been
(24) done. Alzate would have been handled
(25) appropriately at the time for whatever

(1) **E. WARNDERS** 114

(2) **infraction he has at that point; we would have**
(3) **done research on that, and that would have**
(4) **been it.**

(5) Q Who should Kevin Campbell have
(6) complained to specifically regarding Alzate
(7) pushing the boxes into him?

(8) A At that point it could have been
(9) any manager.

(10) Q He should have left the belt?

(11) A Correct.

(12) Q Left the belt --

(13) A Correct.

(14) Q -- as it was in operation?

(15) A He's had workplace violence
(16) training, he understands.

(17) Q He should have left the sword and
(18) complain to who?

(19) A Any manager.

(20) Q Who was there?

(21) A I have several managers working
(22) with him, I don't know exactly who was there.
(23) I mean Robert Mejia was there.

(24) Q Who was there that day?

(25) A Rob Mejia was one. Monty Bovell

(1) **E. WARNDERS** 115

(2) was I believe he was in the station, I'm not a
(3) hundred percent sure, because I know he was on
(4) the phone with one of the employees. I don't
(5) know, I would have to go back and look, but
(6) there would have been several managers there.
(7) So in the morning there's usually at least
(8) four managers there at any given time.

(9) Q Kevin Campbell exercised self
(10) restraint in this interaction with Alzate, did
(11) he not?

(12) A After he put himself in that
(13) situation.

(14) Q What do you mean?

(15) A He should have walked away and
(16) notified a manager. And in his own statement
(17) he says this was an ongoing issue that he
(18) never even reported which means we could have
(19) deescalated the situation even sooner before
(20) this incident even happened had he notified
(21) somebody.

(22) Q Okay. Were it not for Kevin
(23) Campbell having the ability to restrain Alzate
(24) this situation could have been far worse,
(25) isn't that correct?

(1) E. WARNDERS 116

(2) MR. MCGAHA: Object to the form.

(3) A Again, Kevin put himself into that
(4) situation. He should have walked away and
(5) notified a manager.

(6) Q Kevin Campbell put himself in the
(7) situation to have a box cutter pulled on him?

(8) A Yes, he stepped towards him in an
(9) aggressive manner. He got into the other
(10) employee's space and then vulgar language was
(11) being used between the two of them.

(12) Q After he was hit with the box,
(13) correct?

(14) A Again, that's when he should have
(15) walked away.

(16) Q Kevin Campbell restrained
(17) Mr. Alzate from stabbing him, or cutting him
(18) with the box cutter, isn't that correct?

(19) MR. MCGAHA: Object to the form.

(20) A Again, he put himself into that
(21) situation as the aggressor.

(22) Q Did Kevin Campbell not grab
(23) Mr. Alzate's wrist to restrain him from
(24) attacking him with the box cutter?

(25) A Again after he put himself in that

(1) **E. WARNDERS** **117**

(2) **situation.**

(3) Q But he didn't know that Mr. Alzate
(4) had the box cutter, isn't that correct?

(5) A **That's correct.**

(6) Q Okay, so when you say he put
(7) himself in that situation --

(8) A **He put himself --**

(9) Q -- you don't mean that Kevin
(10) Campbell knew that he was going to have a box
(11) cutter pulled on him, correct?

(12) A **I think Kevin Campbell in his own**
(13) **words he said he was intimidating, that could**
(14) **be construed as being intimidating in that**
(15) **situation where he stepped towards Augusto and**
(16) **that he invaded his space and he chest bumped**
(17) **him, and he sat there and talked to him in**
(18) **vulgar language. I think Kevin Campbell put**
(19) **himself in a situation where you don't know**
(20) **what's going to happen at that point. So,**
(21) **yes, I think Kevin Campbell put himself in**
(22) **that situation.**

(23) Q Did Kevin Campbell do the right
(24) thing by restraining Alzate's arms so that
(25) Alzate could not slash anyone with the box

(1) E. WARNDERS 118

(2) cutter?

(3) A I don't think -- I mean, listen I
(4) can't speak to that, I really honestly don't
(5) know.

(6) Q You can't speak to that?

(7) A No, I can't speak to that because I
(8) don't know if Augusto was going to slash
(9) anybody else.

(10) Q Didn't someone else get cut with
(11) the blade?

(12) A Nobody got cut with the blade.

(13) Q Isn't it true that the video showed
(14) that; Campbell was using both of his hands
(15) attempting to control Alzate's arm while
(16) Alzate was wielding the box cutter?

(17) MR. MCGAHA: Object to the form.

(18) A I would have to see the video
(19) again.

(20) Q You don't recall that?

(21) MR. MCGAHA: Object to the form.

(22) A No, I don't recall. I don't know
(23) if it was one hand, two hands, I don't know.

(24) Q Okay. Well, forget the number of
(25) hands, isn't it correct that the video showed

(1) E. WARNDERS 119

(2) Campbell attempting to control Alzate's arm
(3) while Alzate wielded the box cutter?

(4) **A Yes. Correct.**

(5) Q And several other employees had to
(6) intervene in order to get the box cutter away
(7) from him, correct?

(8) **A That is correct.**

(9) Q Were Mr. Campbell's statements
(10) consistent with the video?

(11) **MR. MCGAHA: Object to the form.**

(12) **A According to Jimmy Cahill, yes,**
(13) **they were.**

(14) Q Well, do you believe Mr. Cahill's
(15) conclusions were correct?

(16) **A I believe so, yes.**

(17) **MS. MASSIMI: C-A-H-I-L-L.**

(18) Q Had you ever received any
(19) complaints about Augusto Alzate prior to this
(20) incident?

(21) **A No, I have not.**

(22) Q I'm sorry?

(23) **A I said, no, I don't believe so.**

(24) Q Were you present for any of the GFT
(25) meetings?

(1) E. WARNDERS 120

(2) A Yes, Step One.

(3) Q What happened at Step One?

(4) A What do you mean? Kevin pleads his
(5) case to my managing director, and then at the
(6) end he starts talking about other things that
(7) happened. And that's it. It's basically it's
(8) just basically a meeting to where we just --
(9) we don't say much in the meeting at all. We
(10) are just present in case there's additional
(11) comments for Kevin to ask during that meeting.

(12) Q At that point is it within FedEx
(13) guidelines or is it permissible for you to
(14) reinstate someone's employment?

(15) A Yes, it could be. Yes.

(16) Q Has that ever happened, to your
(17) knowledge, following a GFT Step One?

(18) A Yes, it does.

(19) Q Have you been involved in GFT Step
(20) Ones where someone's termination has been
(21) reversed?

(22) A Not at the top of my head, but I'm
(23) sure there's been one, but I'm not sure at the
(24) top of my head.

(25) Q Who was present at the GFT Step

(1) E. WARNDERS 121

(2) One?

(3) A Step One GFT would be my managing
(4) director, and in our branch it would be
(5) myself, it would be Monty Bovell, and it would
(6) be Lance Reyes.

(7) Q Who was your managing director?

(8) A Nan Malebranche.

(9) MR. MCGAHA: M-A-L-E-B-R-A-N-C-H-E.

(10) First name Nan; N-A-N.

(11) Q So was anyone else present?

(12) A No, that would have been it. It's
(13) probably stated in the GFT packet who was
(14) present.

(15) Q And what happened at the GFT?

(16) A GFT Kevin pleaded his case to my
(17) director, and that was it.

(18) Q Were you present for any EEO
(19) proceedings or meeting with regarding Kevin
(20) Campbell?

(21) A No. The second -- at the end of
(22) the day when he -- at the end of the GFT he
(23) started to speak about the situation that
(24) happened, and that's it. And I think it was
(25) Nan that gave him the EEO packet at that point

(1) **E. WARNDERS** 122

(2) **as soon as he brought that up, even though he**
(3) **was already terminated and encouraged him to**
(4) **fill that out.**

(5) Q Were you then present for that EEO
(6) meeting or proceeding?

(7) A **No, I was not.**

(8) Q Did you -- so you saw Kevin
(9) Campbell at the GFT Step One, correct?

(10) A **Correct.**

(11) Q Did you see him at any point after
(12) that?

(13) A **Not that I recall, no.**

(14) Q You could have reinstated his
(15) employment after that GFT Step One, correct?

(16) A **Not me, no.**

(17) Q Who would have had the authority to
(18) reinstate his employment?

(19) A **That would be Nan Malebranche.**

(20) Q Would that have been within Nan's
(21) discretion to reinstate Kevin's employment?

(22) A **I can't speak to that.**

(23) Q I'm just asking based on your
(24) understanding, did Nan have the authority to
(25) do that?

(1) E. WARNDERS 123

(2) A I'm not a director, so I don't know
(3) exactly what her authority, where it lies who
(4) she reaches out to; I don't know whatever
(5) process goes on.

(6) Q Had anyone ever complained to you
(7) that Campbell was missing the transitioning
(8) freight as he splits the belt?

(9) THE WITNESS: The transitioning
(10) freight?

(11) MS. MASSIMI: Yes.

(12) A I don't recall. I don't know.

(13) Q Did anyone ever complain to you
(14) about Campbell splitting the belt?

(15) A I don't recall.

(16) Q Do you know if anyone was injured
(17) as a result of this incident?

(18) A According to all the statements
(19) nobody was injured. Statements, security
(20) there was no -- everybody I think was asked as
(21) well.

(22) Q Okay. Did you write any reports
(23) following this incident with Campbell and
(24) Alzate?

(25) THE WITNESS: Write any reports,

(1) **E. WARNDERS** 124

(2) like a manager rationale?

(3) **MS. MASSIMI:** Sure.

(4) **A** Yeah, I mean, if an employee GFTs
(5) it, then it requires a manager's rationale to
(6) go inside the GFT packet.

(7) **Q** Did you review any documents in
(8) preparation for today's deposition?

(9) **THE WITNESS:** In regards to, like,
(10) what exactly?

(11) **MS. MASSIMI:** Anything. Did you
(12) review -- what?

(13) **THE WITNESS:** Like the initial
(14) complaint whatever that was put through?

(15) **MS. MASSIMI:** Anything.

(16) **Q** Did you review any documents in
(17) preparation for today?

(18) **A** Yes, whatever was given to me in
(19) the initial complaint I went through. The
(20) very beginning when I got notified that there
(21) was a lawsuit for racial discrimination.

(22) **Q** Did you meet with an attorney in
(23) preparation for today's deposition?

(24) **A** Yes.

(25) **Q** When was that meeting?

(1) E. WARNDERS 125

(2) THE WITNESS: Two days ago, right?

(3) Two days ago?

(4) BY MR. MCGAHA: I can't answer.

(5) A Two days ago.

(6) Q How did that meeting take place,
(7) was it in person, over Zoom, over the phone,
(8) or something else?

(9) A It was in person.

(10) Q Okay. And did you review any
(11) documents during that meeting?

(12) A No, no documents pertaining to the
(13) case. It was just more of an outline of
(14) expectations and stuff. You know, just normal
(15) I guess getting ready for a deposition.

(16) Q Did you review any documents that
(17) you created during your preparation for this
(18) deposition?

(19) THE WITNESS: That I created for
(20) this deposition?

(21) MS. MASSIMI: No.

(22) Q Yeah, did you review any
(23) documents -- in preparing for this deposition,
(24) did you review any documents that you had
(25) previously created or written?

(1) E. WARNDERS 126

(2) A Like looked at a couple of policies
(3) which was 2-5, 880, just to scan over it, just
(4) get a little familiar with it again.

(5) Q What is that 2-5, 880?

(6) A Yes.

(7) Q What's that.

(8) A One of them was on security. One
(9) of them was just about acceptable conduct
(10) policy P2-5.

(11) Q What's P2-5?

(12) A Just A policy.

(13) Q A policy about what?

(14) A Just a FedEx policy.

(15) Q About what?

(16) A Just a general overview of
(17) acceptable policy for FedEx; it's just a
(18) guideline.

(19) Q What does it say?

(20) A It says that --

(21) MR. MCGAHA: It was produced.

(22) MS. MASSIMI: What?

(23) MR. MCGAHA: It was produced.

(24) MS. MASSIMI: That, right, okay,
(25) I'm asking the witness about it.

(1) **E. WARNDERS** 127

(2) **MR. MCGAHA:** Asking him what it
(3) **says.**

(4) **MS. MASSIMI:** Yeah.

(5) **MR. MCGAHA:** Okay.

(6) **MS. MASSIMI:** Yeah, what does that
(7) **say. Right, he said he reviewed it in**
(8) **preparation for today.**

(9) **A I just skimmed through it. I just**
(10) **went through it just looking to see if there**
(11) **was anything -- just getting familiar.**

(12) **Q And do you recall what in sum and**
(13) **substance what information is contained in**
(14) **there?**

(15) **A That there's a lot in there. It**
(16) **talks about theft. It talks about all sorts**
(17) **of stuff. Workplace violence was in there,**
(18) **theft; it's just a general overview.**

(19) **Q What else did you review?**

(20) **A That's basically about it. I**
(21) **looked at employee statements. I looked at**
(22) **Jimmy Cahill's whatever notes you want to say**
(23) **from his interviews.**

(24) **Q Did you find his notes to be**
(25) **accurate?**

(1) E. WARNDERS 128

(2) **A I answered that.**

(3) Q Did you find his notes to be

(4) accurate?

(5) **A Yes.**

(6) Q Did Kevin Campbell violate any

(7) FedEx policies?

(8) **A Yes.**

(9) Q Which policy did he violate?

(10) **A Workplace violence.**

(11) Q What number is that policy or

(12) what's the title of that policy?

(13) **A As it relates to the acceptable --**

(14) **MS. MASSIMI: I can't hear you,**

(15) **sir, and I know the court reporter is**

(16) **having trouble hearing you. This has**

(17) **been an issue throughout the whole**

(18) **deposition, I again am asking you to**

(19) **speak up.**

(20) **THE WITNESS: Okay.**

(21) **MS. MASSIMI: Can you read the**

(22) **question back, please.**

(23) **(Whereupon, the requested portion**

(24) **was read back by the reporter.)**

(25) **MS. MASSIMI: It would be 2-5.**

(1) **E. WARNDERS** 129

(2) **It's workplace violence as it pertains to**
(3) **the acceptable conduct policy, P2-5.**

(4) Q Is there a specific provision that
(5) you're saying he violated?

(6) A Yes, there it's outlined inside
(7) there, yes. Intimidating.

(8) Q Go ahead?

(9) A Threatening.

(10) Q Anything else?

(11) A No.

(12) Q Did Kevin Campbell violate any
(13) other FedEx policies justifying his
(14) termination?

(15) A Justifying his termination, no,
(16) that would be it.

(17) Q Are there any circumstances under
(18) which an employee is permitted to defend
(19) themselves from workplace violence?

(20) **THE WITNESS: Defend themselves**
(21) **from workplace violence?**

(22) **MS. MASSIMI: Yes.**

(23) **MR. MCGAHA: Objection to the form.**

(24) A I guess each situation would be
(25) unique, yeah. Like, I mean, if somebody is

(1) **E. WARNDERS** 130

(2) **got a gun or somebody's coming at you, yeah,**
(3) **you'd have to defend yourself at that point.**
(4) **If your life is in imminent danger, yes.**

(5) Q Do you believe that Kevin
(6) Campbell's life was in imminent danger?

(7) A After he was the aggressor and did
(8) what he did, yes; I do believe that Augusto
(9) had intent.

(10) Q Were the police called regarding
(11) this incident?

(12) A No, they were not.

(13) Q I'm sorry?

(14) A No, they were not.

(15) Q Why not?

(16) A Because the situation was
(17) deescalated.

(18) Q Do you believe that Kevin Campbell
(19) committed a crime?

(20) A A crime, no. I mean, I don't know
(21) the law like that, but no.

(22) Q Do you believe that Alzate
(23) committed a crime?

(24) A Alzate, again, I don't know the
(25) law, so my answer would be I don't know. I

(1) **E. WARNDERS** 131

(2) **don't know the law.**

(3) Q You don't know if what Alzate did
(4) is a crime?

(5) A **I'm not in the law, I don't know.**

(6) Q But you know whether certain things
(7) are legal or illegal, correct?

(8) A **Yes. To some extent, yes.**

(9) Q Assault is illegal, using a weapon
(10) on someone is illegal, correct?

(11) A **Okay.**

(12) Q Is it or, no, I mean you tell me?

(13) A **I would believe so, yes.**

(14) Q Did you have an obligation, or did
(15) anyone have an obligation to notify the police
(16) of what transpired between Augusto Alzate and
(17) Kevin Campbell?

(18) A **Once the situation got deescalated**
(19) **we could call 911, but the situation was**
(20) **deescalated at that point.**

(21) Q I'm not understanding the
(22) connection between those two things. Is it
(23) your testimony that you only would have called
(24) the police to deescalate the situation?

(25) A **No, I'm saying each situation is**

(1) **E. WARNDERS** 132

(2) **different, but that situation was deescalated**
(3) **at that point. Nobody was injured at that**
(4) **point.**

(5) Q Do you believe that you're limited
(6) to calling the police only during an ongoing
(7) situation?

(8) A I don't believe I'm limited. I
(9) just, I believe that if the situation needed
(10) to have the police there, everybody had an
(11) opportunity to call the police including Kevin
(12) Campbell, which he did not.

(13) Q Do you think he should have called
(14) the police?

(15) A I don't know, it's up to him. I
(16) don't know what he felt.

(17) Q Did anyone ever tell you whether
(18) Kevin Campbell was disruptive or
(19) insubordinate?

(20) **THE WITNESS: Disruptive or**
(21) **insubordinate? You got to be specific.**
(22) **I really honestly don't know, I mean the**
(23) **question are very vague.**

(24) Q Did anyone ever come to you and
(25) tell you Kevin Campbell is insubordinate, he

(1) E. WARNDERS 133

(2) is doing something that's insubordinate or
(3) disruptive?

(4) THE WITNESS: For what?

(5) MS. MASSIMI: For anything.

(6) A I would have to have a specific for
(7) me to remember. I told you there's 250 --

(8) Q These are questions about him as an
(9) employee, do you recall any information from
(10) anyone either ever telling you that Kevin
(11) Campbell was disruptive or insubordinate?

(12) MR. MCGAHA: Objection to the form.

(13) A There's 250 to 300 employees, we've
(14) gone over this. I am not going to remember
(15) every single little thing, but if you give me
(16) a specific, then I will remember that.

(17) Q What type of security, if any, does
(18) FedEx provide for its employees at the LGA A
(19) Station?

(20) A We have two security personnel that
(21) are on site pretty much almost 24/7 to ensure
(22) that TSA does not breach because we're on a
(23) main road so we got to make sure that the
(24) doors are constantly closed and to make sure
(25) that, you know, people don't just walk into

(1) **E. WARNDERS** 134

(2) **our facility. And then we have a security**
(3) **specialist who bounces around from, you know,**
(4) **different stations.**

(5) **Q In May of 2021 or on May 18, 2021,**
(6) **were there any security personnel at the LGA A**
(7) **Station?**

(8) **THE WITNESS: Security personnel**
(9) **meaning?**

(10) **MS. MASSIMI: Security.**

(11) **THE WITNESS: The two that don't**
(12) **let people in?**

(13) **MS. MASSIMI: On May 18, 2021, was**
(14) **there any security personnel at the LGA A**
(15) **Station?**

(16) **A There would be the two, the two**
(17) **hired security guards would have been at that**
(18) **station, yes.**

(19) **Q Did they witness this incident?**

(20) **A No, they did not. No.**

(21) **Q Why not?**

(22) **MR. MCGAHA: Objection to the form.**

(23) **A It was not in their area.**

(24) **Q What do you mean it wasn't in their**
(25) **area?**

(1) E. WARNDERS 135

(2) A Meaning they were not near where
(3) the situation happened.

(4) Q Is there purpose to protect
(5) employees from each other, or is there purpose
(6) to make sure that no one walks into the
(7) facility?

(8) A To protect employees to make sure
(9) that nobody puts anything that, you know,
(10) tampers with trucks, puts anything into
(11) packages, you know, there's a whole array of
(12) what they do, I mean, but as far as like
(13) getting involved with employees and do like
(14) the workplace violence, no.

(15) Q Have you ever had a meeting with
(16) Kevin Campbell alone in your office?

(17) A I'm sure I have.

(18) Q About what?

(19) THE WITNESS: Give me something
(20) specific.

(21) MS. MASSIMI: It's not my job to
(22) give you something specific, sir, you're
(23) here to testify about based on what you
(24) know.

(25) THE WITNESS: You are asking me for

(1) **E. WARNDERS** 136

(2) **something that happened three, four years**
(3) **ago.**

(4) **MS. MASSIMI: Correct.**

(5) **THE WITNESS: I would need**
(6) **something specific in order to answer**
(7) **that question.**

(8) Q Well, Kevin Campbell was able to
(9) testify in detail. If you are not able to
(10) testify in detail about one on one
(11) conversations you've had with him with the
(12) door closed, then just say that. But I am not
(13) here to jog your memory.

(14) I am asking you have you ever had
(15) one-on-one meetings with Kevin Campbell in
(16) your office with the door closed?

(17) **MR. MCGAHA: Objection to the form.**

(18) **A I don't recall.**

(19) Q What?

(20) **A I don't recall, you would have to**
(21) **be specific.**

(22) Q Do you keep a written record of
(23) meetings that you have with employees in your
(24) office?

(25) **A No, I do not.**

(1) **E. WARNDERS** 137

(2) Q So when you say I would have to
(3) give you something specific what do you mean?

(4) A So that I can remember exactly what
(5) we're talking about.

(6) Q It's not a trick question, it's
(7) just regarding any meetings you had with Kevin
(8) Campbell.

(9) A I don't know. Kevin Campbell could
(10) have walked by my office and said, hey, how's
(11) it going today, you know, I mean am I supposed
(12) to remember exactly what was said, you know; I
(13) have no idea.

(14) MS. MASSIMI: Why don't we take a
(15) ten minute break and come back at 1:30;
(16) I'm almost done?

(17) MR. MCGAHA: Sounds good. Thank
(18) you.

(19) (Whereupon, a short recess was
(20) taken.)

(21) MR. MCGAHA: We just confirmed that
(22) the settlement agreement that we
(23) discussed earlier that you asked him
(24) about earlier in the deposition has a
(25) confidentiality agreement, we are waiting

(1) E. WARNDERS 138

(2) to receive that portion of the agreement,
(3) so that I can send it to you.

(4) MS. MASSIMI: Let's just put that
(5) on the record.

(6) MR. MCGAHA: That's fine, as long
(7) as that's fine with you. We were
(8) actually waiting to receive the agreement
(9) or that portion of it. I mean, you have
(10) my word that there's a confidentiality
(11) agreement, that's fine with me.

(12) MS. MASSIMI: Yeah, sure.

(13) MR. MCGAHA: Fine. All right let's
(14) go.

(15) MS. MASSIMI: I just have a couple
(16) more questions and if we can just put
(17) that statement on the record and we can
(18) proceed.

(19) MR. MCGAHA: Okay. Earlier in the
(20) deposition Ms. Massimi, plaintiff's
(21) counsel asked Mr. Warnders about a
(22) lawsuit that he filed where he was a
(23) plaintiff in a medical malpractice case
(24) here in New York. A question was posed
(25) with respect to the settlement agreement

(1) **E. WARNDERS** 139

(2) and the contents thereof. I objected and
(3) stated that there was more than likely a
(4) confidentiality agreement and I
(5) instructed the witness not to answer.
(6) Since then we have confirmed that there
(7) is a confidential agreement in the record
(8) in that settlement agreement, so
(9) therefore Mr. Warnders has been told not
(10) to speak anymore about it.

(11) **MS. MASSIMI:** Okay. I just want to
(12) ask a question about this. Let's mark
(13) this as Exhibit 1.

(14) (E-mail was marked as Plaintiff's
(15) Exhibit(s) 1 for identification, as of
(16) this date.)

(17) **MS. MASSIMI:** This is ESI481.

(18) **MR. MCGAHA:** All right.

(19) Q Mr. Warnders, I'm showing you a
(20) document bearing stamp ESI481 that we marked
(21) for purposes of today's plaintiff's production
(22) Number One -- I'm sorry, as Plaintiff's
(23) Exhibit 1.

(24) Do you recognize this document?

(25) **THE WITNESS:** Is there more? I can

(1) **E. WARNDERS** **140**

(2) **only see down to --**

(3) **MR. MCGAHA: Sharon, can you scroll**
(4) **down to make sure he can see the entire**
(5) **document. Is it just this one page?**

(6) **MS. MASSIMI: Yes.**

(7) **THE WITNESS: That's it, the**
(8) **pictures are the last part?**

(9) **MS. MASSIMI: Yes.**

(10) **THE WITNESS: Okay.**

(11) **Q Okay, I'm showing you what we**
(12) **marked for purposes of today's Plaintiff's**
(13) **Exhibit 1; do you recognize this document?**

(14) **A Okay. Yes.**

(15) **Q What is this document?**

(16) **A This document is a still photo off**
(17) **of the actual incident security footage.**

(18) **Q This document is something else**
(19) **then what you just described, is it not?**

(20) **A What?**

(21) **MR. MCGAHA: Generally, what is it?**

(22) **Q What is this document that you are**
(23) **seeing?**

(24) **A Oh, it's an E-mail.**

(25) **MS. MASSIMI: Right.**

(1) **E. WARNDERS** 141

(2) **THE WITNESS:** Oh, I apologize.

(3) Listen, I understand you guys do this all
(4) the time, I don't do this all the time,
(5) so.

(6) Q This is an E-mail exchange between
(7) who?

(8) A This would be between in the very
(9) beginning me and Cahill, security, and then me
(10) and my boss Nan, and that's it.

(11) Q What was the purpose of this
(12) E-mail?

(13) A Purpose of this E-mail was to
(14) explain -- to show footage of what happened,
(15) what transpired.

(16) Q Why were you providing this
(17) information to Nan Malebranche?

(18) A This was after the employee was
(19) terminated.

(20) Q Right, which is why I am asking you
(21) why you were providing this information to Nan
(22) Malebranche?

(23) A I don't recall. I mean it might
(24) have been let me see -- review the security as
(25) you can see there. Okay, yes, it's just to

(1) **E. WARNDERS** **142**

(2) **keep my boss in the loop after the**
(3) **termination.**

(4) **THE WITNESS: This is clearly after**
(5) **the termination right?**

(6) Q Do you see the part here it's the
(7) second sentence in the middle of E-mail where
(8) it says, as you can see there was initial
(9) contact on Kevin's part; did you write that?

(10) A That would be me, yes.

(11) Q You testified earlier that Alzate
(12) initially made contact with Kevin Campbell,
(13) correct?

(14) A Correct.

(15) Q That information is not contained
(16) in this E-mail, correct?

(17) A This is not an all encompassing
(18) E-mail. It's not a whole reflective of
(19) everything that happened.

(20) Q Right, so what was the purpose of
(21) providing this selective information to Nan
(22) Malebranche in this E-mail?

(23) A I don't really recall why it was
(24) provided, it must have just been I don't know
(25) if questions were being asked and, you know,

(1) **E. WARNDERS** **143**

(2) **it's like I said, with Alzate it was very**
(3) **clear cut, you know. And then with Kevin**
(4) **Campbell you know who GFT it, did this is part**
(5) **of the process.**

(6) Q What is part of the process?

(7) A I'm saying, to keep my boss
(8) informed.

(9) Q At this point had Nan Malebranche
(10) viewed the video?

(11) A I don't recall. I don't know.

(12) Q What did you understand that Nan
(13) was going to do with the information that you
(14) were providing to her?

(15) A Just to keep her in the loop.

(16) Q Was she going to use that
(17) information to make her decisions about the
(18) GFT process?

(19) A No, but as you can see like her
(20) response you have written statements just like
(21) when I said, you know, my manager comes to me
(22) with questions and I guide, she's asking me
(23) the same thing.

(24) Q Right, what was the purpose of you
(25) providing her with this information, was it to

(1) E. WARNDERS 144

(2) assist her informing her conclusions regarding
(3) the GFT process, or something else?

(4) A No, you can't put words in there,
(5) it was just going over the contact from Kevin
(6) Campbell.

(7) Q Why were you going over the contact
(8) with Kevin Campbell?

(9) A I don't know, it must have been a
(10) question that was asked.

(11) Q When you said here Alzate closes
(12) his eyes when the contact happens, what are
(13) you referring to?

(14) A Because there was contact. You can
(15) see the contact, and you can see Augusto
(16) stepping back. And there was more footage
(17) that could be seen when you watched the video.

(18) Q Do you believe that it was
(19) important to interpret this video based on the
(20) whole video?

(21) THE WITNESS: To interpret what?

(22) MS. MASSIMI: What happened on the
(23) video.

(24) A I understand, but like I clearly
(25) stated earlier, if he would have walked away,

(1) **E. WARNDERS** **145**

(2) **Kevin Campbell, we wouldn't be in the**
(3) **situation that we're in now, and he chose not**
(4) **to.**

(5) Q That's one perspective. I mean
(6) certainly you also admitted that Alzate was
(7) the first person to make contact with him,
(8) correct?

(9) A **Correct.**

(10) Q Or was the first person to make
(11) contact in that altercation, correct?

(12) A **Correct.**

(13) Q Okay. My question is simply, what
(14) was the purpose of this communication between
(15) you and Nan Malebranche, were you preparing
(16) for a meeting, were you preparing to write a
(17) report, what was going on here?

(18) A **I don't recall. I don't know.**

(19) Q You also said up here in part of
(20) the E-mail in Plaintiff's Exhibit 1, she said,
(21) do you have witness statements. And you said
(22) yes, one employee clearly states that Kevin
(23) threw his shoulder into Alzate and got right
(24) into his face.

(25) What is that employee's name?

(1) E. WARNDERS 146

(2) A I believe that was Jose Morano.

(3) Q Did Jose Morano still work at

(4) FedEx?

(5) A No, he does not.

(6) Q Why not?

(7) A I believe he left us, he works at

(8) the IRS.

(9) MS. MASSIMI: The IRS. Okay.

(10) Q Do you know when he stopped working

(11) at FedEx?

(12) A I don't recall.

(13) Q Is there anything else that you

(14) want to mention about this situation that you

(15) don't think you had an opportunity to discuss?

(16) A No, I think I made my point very

(17) clear.

(18) Q What was your point?

(19) A My point was that if Kevin Campbell

(20) would have just simply walked away and

(21) notified a manager we wouldn't even be in this

(22) situation that we are in now.

(23) Q Do you believe that he was

(24) responsible for Alzate pulling the box cutter

(25) on him?

(1) E. WARNDERS 147

(2) A I believe he put him into a state
(3) of fear, yes.

(4) Q How did he put him into a state of
(5) fear?

(6) A He intimidated by stepping into his
(7) private space, chest bumping, and cursing
(8) going back and forth, yeah.

(9) Q Alzate was also cursing, correct?

(10) A Correct.

(11) Q Alzate also stepped into Campbell's
(12) personal space, correct?

(13) A No. Not at that point, no.

(14) Q At any point, did Alzate step into
(15) Kevin Campbell's personal space?

(16) A I don't recall, but in the instant
(17) where it heated, that was Kevin stepping into
(18) Alzate's space.

(19) Q Is it your testimony that at no
(20) point during this altercation did Alzate step
(21) into Kevin Campbell's personal space?

(22) A I would have to review the
(23) videotape to confirm.

(24) MS. MASSIMI: I am just going to
(25) put something else up here, give me a

(1) **E. WARNDERS** **148**

(2) **second.**

(3) **(E-mail was marked as Plaintiff's**
(4) **Exhibit(s) 2 for identification, as of**
(5) **this date.)**

(6) **Q Who can scroll, is it you Mr. Toth?**

(7) **MR. MCGAHA: No, it's Sharon.**

(8) **MS. MASSIMI: Mr. Warnders, I'm**
(9) **showing you a document we have marked for**
(10) **purposes of today as Plaintiff's Exhibit**
(11) **2 bearing stamps ESI9 through 13.**

(12) **THE WITNESS: Okay.**

(13) **MS. MASSIMI: Sharon, can you just**
(14) **scroll throughly this document.**

(15) **I don't need you to read**
(16) **completely, Mr. Warnders, I am going to**
(17) **draw your attention to a specific**
(18) **portion, but I just want you to see this**
(19) **whole document first.**

(20) **THE WITNESS: Okay.**

(21) **Q So Mr. Warnders, do you recognize**
(22) **this document?**

(23) **A This is the security.**

(24) **THE WITNESS: Is that the bottom,**
(25) **is that the last part?**

(1) **E. WARNDERS** **149**

(2) **MS. MASSIMI: No.**

(3) **THE WITNESS: Well, what am I**
(4) **missing here?**

(5) Q Do you recognize this document?

(6) **MR. MCGAHA: Are you showing him**
(7) **the entire document?**

(8) **MS. MASSIMI: Sure go ahead. You**
(9) **can also pull it up and take a look at**
(10) **it, if you want.**

(11) **And if you can scroll up to the**
(12) **second to the last page.**

(13) Q Do you recognize this document, Mr.
(14) Warnders?

(15) **A Yes.**

(16) Q What is this document?

(17) **THE WITNESS: This looks like --**
(18) **was it Cahill on the top, I can't see**
(19) **Cahill's name?**

(20) **MR. MCGAHA: Can you zoom in?**

(21) Q Do you recognize this document?

(22) **A Okay. Yes.**

(23) Q What is this document?

(24) **A It looks like an initial -- can you**
(25) **scroll back up, because I am only seeing parts**

(1) **E. WARNDERS** 150

(2) **of this document. Okay, it looks like an**
(3) **initial report prior to the interviews.**

(4) Q Do you see the section here at the
(5) third bullet point, what is bottom Bates stamp
(6) number. Oh, okay, at ESI12 at the third
(7) bullet point, do you see that where it says a
(8) review of the applicable VSS footage?

(9) **A Okay. Yes.**

(10) Q And do you see the part where it
(11) says 82340?

(12) **A Yes.**

(13) Q It shows Alzate approaching
(14) Campbell's work area in a clearly agitated
(15) state flailing his arms and pushing several
(16) packages in Campbell's direction.

(17) Do you see that?

(18) **A Correct. Yes.**

(19) Q And do you recall seeing that on
(20) the video when you observed the video?

(21) **A Yes, I believe so. Yes.**

(22) Q Did you provide that information to
(23) Nan Malebranche when you were E-mailing with
(24) her about the video?

(25) **A Of course, she got all of this**

(1) **E. WARNDERS** **151**

(2) **information.**

(3) Q But that information -- this
(4) information is not contained in the E-mail
(5) that we just reviewed, correct?

(6) A Okay.

(7) Q I'm asking you?

(8) A Yes.

(9) Q Yes, it's included, or it's not?

(10) A No, it was not included in that
(11) initial E-mail that I had.

(12) Q The statement that says in Exhibit
(13) 2 Alzate is shown approaching Campbell's work
(14) area in a clearly agitated state flailing his
(15) arms and pushing several packages in
(16) Campbell's direction. That information you
(17) did not include in the E-mail to Ms.
(18) Malebranche that we just reviewed, correct?

(19) A That's correct.

(20) Q Why did you not include that in
(21) your E-mail?

(22) A I guess because we weren't talking
(23) about that at that time.

(24) Q Why were you not talking about
(25) that?

(1) E. WARNDERS 152

(2) A She's already probably reviewed
(3) this, I'm assuming. This happened on 5/18.
(4) That E-mail that I sent her was on 6/1.

(5) Q You attached a copy of the video to
(6) that E-mail to Ms. Malebranche, correct?

(7) A Okay.

(8) Q Did you?

(9) A I have no idea.

(10) Q Do you want to take another look at
(11) it?

(12) A What the one before, I saw the
(13) pictures.

(14) MR. MCGAHA: Sharon, pull up the
(15) other E-mail, please.

(16) A The video is attached. Okay.

(17) Q Why did you attach the video in
(18) your E-mail on June 1, 2021 to Nan
(19) Malebranche?

(20) A I don't know maybe she wanted to
(21) see the video.

(22) Q Are you certain that she had viewed
(23) the video at that point?

(24) A I have no idea.

(25) Q Okay. During the GFT process do

(1) E. WARNDERS 153

(2) you know if Kevin Campbell was shown the
(3) video?

(4) **A In the GFT process, in that**
(5) **meeting, no, I don't believe that video was**
(6) **shown in that meeting; I don't recall, no.**

(7) Q Was Kevin Campbell ever permitted
(8) to review the video as part of the GFT
(9) process?

(10) **A I don't know, you would have to**
(11) **speak with Nan on that.**

(12) Q Well, do you know if he was ever
(13) shown the video as part of the GFT process?

(14) **A I do not know.**

(15) Q Is that standard procedure to --
(16) well, is there a procedure related to video
(17) evidence when it comes to GFTs, is it allowed
(18) to be shown to employees who are GFTing their
(19) termination?

(20) **A I don't think -- I mean, I can't**
(21) **talk to that, I really honestly don't know;**
(22) **it's not handled at my level.**

(23) Q What's not handled at your level?

(24) **A The GFT, it's handled at the**
(25) **director level.**

(1) **E. WARNDERS** **154**

(2) Q But you were at the GFT, correct?

(3) A **That's correct.**

(4) Q At that point you had seen the
(5) video, correct?

(6) A **That's correct.**

(7) Q But you don't know if Kevin
(8) Campbell was shown the video?

(9) A **I do not know.**

(10) Q Do you think that in all fairness
(11) he should have been shown the video as part of
(12) the GFT process?

(13) **MR. MCGAHA: Object to the form.**

(14) A **I don't know that he was or was**
(15) **not.**

(16) **MS. MASSIMI: Okay. I don't have**
(17) **any other questions.**

(18) **(Continued on the next page to**
(19) **accommodate the jurat.)**

(20)

(21)

(22)

(23)

(24)

(25)

(1) E. WARNDERS 155

(2) MR. MCGAHA: No questions from me.

(3) MS. MASSIMI: Okay. I think we are
(4) all set.

(5) (Whereupon, at 2:05 p.m., the
(6) examination of this witness was
(7) concluded)

(8)

(9) -----
ERIC WARNDERS

(10)

(11)

(12) Subscribed and sworn to before me

(13) this ____ day of _____, 20__.

(14)

(15) -----
NOTARY PUBLIC

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ERIC WARNDERS

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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

I, PETER TOTH, a Notary Public for
and within the State of New York, do hereby
certify:

That the witness whose examination
is hereinbefore set forth was duly sworn and
that such examination is a true record of the
testimony given by that witness.

I further certify that I am not
related to any of the parties to this action
by blood or by marriage and that I am in no
way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 8TH day of February, 2024.



PETER TOTH

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(1) **ERRATA SHEET FOR: ERIC WARNDERS**

(2) **ERIC WARNDERS, being duly sworn, deposes and**
(3) **says: I have reviewed the transcript of my**
(4) **proceeding taken on 02/08/2024. The following**
(5) **changes are necessary to correct my testimony.**

(6)	PAGE	LINE	CHANGE	REASON
(7)	----	----	-----	-----
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(21)	----	----	-----	-----
(22)	----	----	-----	-----

(23) **Witness Signature: _____**

Subscribed and sworn to, before me
(24) **this ____ day of _____, 20 ____.**

(25) **(NOTARY PUBLIC) MY COMMISSION EXPIRES**

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